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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1886.**

No. 84. 11

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, PLAINTIFF IN ERROR,

*vs.*

JOHN C. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

**FILED SEPTEMBER 20, 1886.**

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1–3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1885, thereof, between La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, a corporation, plaintiff, and John C. Hall, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4th day of January, in the year of our Lord one thousand eight hundred and eighty-six.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.]

A. P. SELBY,
*Clerk Circuit Court United States, Eastern District of Missouri,*
By —— ——, *Deputy.*

Allowed by—
SAMUEL TREAT, *Judge.*

4 [Endorsed:] No. 2247. United States circuit court, eastern district of Missouri. La Confiance Ins. Co., &c., &c., *vs.* John C. Hall. Writ of error to the circuit court of the U. S. for E. district of Missouri. Returned and filed 4th day of Jan'y, 1886. A. P. Selby, clerk.

*Return to Writ.*

UNITED STATES OF AMERICA, }
*Eastern District of Missouri,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal of the United States Circuit Court, Eastern District of Missouri

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this first day of February, A. D. 1886.

A. P. SELBY,
*Clerk of said Court.*

5 The United States of America to John C. Hall, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1886, next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this fourth day of January, in the year of our Lord one thousand eight hundred and eighty-six.

SAMUEL TREAT,
*Judge United States District Court, Eastern District of Missouri.*

6 [Endorsed:] 2247. United States circuit court, eastern district of Missouri. La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, a corporation, pl'ff in error, *vs.* John C. Hall, def't in error. Citation. Filed January 4th, 1886. A. P. Selby, clerk.

UNITED STATES OF AMERICA, *Eastern District of Missouri*, } *ss:*

I return on this writ that I executed the same on the 17th day of February, A. D. 1886, by delivering a true copy of said writ to the within-named defendant, John C. Hall, at his place of business, No. 204 N'th 3d street, St. Louis, Mo., in the above district.

J. E. D. COUZINS,
*U. S. Marshal,*
Per J. H. BOHLE, *Deputy.*

Fees:

| | |
|---|---|
| Service | $2 00 |
| 1 m. tr. | 06 |
| | $2 06 |

7 Supreme Court of the United States. October Term, 1886.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, a Corporation, Plaintiff in Error,
*vs.*
JOHN C. HALL, Defendant in Error. } In Error.

And now comes the said plaintiff in error and says that in the record and proceedings of the circuit court of the United States for the eastern district of Missouri in the above-entitled cause there is manifest error, and said plaintiff assigns as errors the following, to wit:

1. That said court admitted improper and illegal testimony offered by the defendant.
2. That said court rejected proper and legal testimony offered by the plaintiff.
3. That the court gave to the jury improper and illegal instructions.
4. That the court refused to give to the jury proper and legal instructions asked by the plaintiff.
5. That the verdict was against the evidence.
6. That the verdict was against the law applicable to the case.
7. That the verdict was against the law and the evidence and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment rendered in favor of the plaintiff was for the sum of $2,007.35, whereas it should have been for the sum of $15,000.00.
10. That said court overruled the motion for a new trial made in the cause by plaintiff.

And the said plaintiff in error prays that the judgment aforesaid may be reversed, and that it may be restored to all things it has lost by reason thereof.

GEO. A. MADILL,
THOMAS E. RALSTON,
*Att'ys for Plaintiff in Error.*

8 [Endorsed:] 2247. La Confiance Insurance Company, pl'ff in error, *vs.* John C. Hall, def't in error. Assignment of errors. Filed January 4, '86. A. P. Selby, clerk.

9 UNITED STATES OF AMERICA, } ss:
*Eastern District of Missouri,*

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 7th day of September, A. D. 1883, the following, among other, proceedings were had and appear of record in said court, to wit:

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCES CONTRE L'INCENDIE, a Corporation, Plaintiff,
*vs.*
JOHN C. HALL, Defendant. } 2247.

Now comes the defendant, by Given Campbell, his attorney, and files transcript from St. Louis circuit court and enters appearance herein.

Said transcript is in words and figures following, to wit:

STATE OF MISSOURI, *City of St. Louis,* } *ss.*:

Be it remembered that heretofore, to wit, on the 17th day of May, 1883, there was filed in the office of the clerk of the circuit court, city of St. Louis, a petition, which is in words and figures as follows, to wit:

*Petition.*

STATE OF MISSOURI, *City of St. Louis,* } *ss.*:

In the Circuit Court, City of St. Louis. June Term, 1883.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCES CONTRE L'INCENDIE, a Corporation, Plaintiff,
*vs.*
JOHN C. HALL, Defendant.

11 Now comes plaintiff, and for cause of action against defendant herein states that at the times hereinafter mentioned it was and still is a corporation duly created, organized, and existing under and by virtue of the laws of the Republic of France and duly empowered thereby to do a general fire insurance business; that heretofore, to wit, on the seventeenth day of December, 1880, defendant, John C. Hall, having been theretofore duly appointed by plaintiff as its general agent, under the name and style of John C. Hall and Co., for the States of Missouri, Tennessee, Arkansas, Kansas, and Colorado and the Territory of New Mexico, did, together with one F. C. Thompson and one B. R. Davis, duly execute and deliver to plaintiff their certain bond in writing (herewith filed and marked Exhibit "A"), duly sealed with their seals and dated on said day, whereby the said John C. Hall, as principal, and the said F. C. Thompson and B. R. Davis, as sureties, jointly and severally and firmly bound themselves, their heirs, executors, and administrators, unto plaintiff in the penal sum of twenty-five thousand dollars, to be well and truly paid to plaintiff, its successors or assigns, and that there was a condition to said bond thereunder written in words and figures following, to wit: "Whereas the above-bounden has been appointed general agent of the said company for the States of Missouri, Kansas, Tennessee, Arkansas, Colorado, and New Mexico, now, therefore, the condition of this obligation is such that if the said

general agent shall faithfully account for and pay over to the said company all moneys that shall be paid to him belonging to the said company, and shall in all things well and truly, faithfully and honestly, discharge the duties of general agent of said company, such as they appear from their agreement between them and said company, then this obligation to be void; otherwise to remain in full force and effect."

13 Plaintiff states that after the execution and delivery of said bond and prior to the first day of January, 1883, the defendant, John C. Hall, did, by virtue of his official position as general agent of plaintiff for the States and Territory aforesaid, receive into his hands and possession as such general agent divers sums of money, amounting in the aggregate to the sum of fifteen thousand dollars, being the money and property of plaintiff.

Plaintiff avers and assigns as a breach of the condition of the aforesaid bond that defendant, John C. Hall, has wrongfully failed, neglected, and refused, and still wrongfully fails, neglects, and refuses, to account for or pay over to plaintiff, though often requested so to do, the said sum of fifteen thousand dollars or any part thereof, being the money and property of plaintiff received by said Hall as general agent of plaintiff for the States and Territory aforesaid, after the execution of said bond and prior to the first day of January, 1883, but, on the contrary, the said Hall has converted said sum to his own use, to the damage of plaintiff in the sum of twenty-five thousand dollars.

Wherefore plaintiff prays judgment against defendant in the said sum of twenty-five thousand dollars, being the penalty of said bond, with interest and costs.

MADILL & RALSTON,
*Attorneys for Plaintiff.*

And on the same day a summons issued, directed to the sheriff of the city of St. Louis, which summons together with the sheriff's return thereon are in words and figures as follows, to wit:

15 *Summons.*

THE STATE OF MISSOURI, } ss:
*City of St. Louis,* }

To the sheriff of the city of St. Louis, Greeting:

We command you to summon John C. Hall to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis on the first Monday of June next, then and there to answer the complaint of La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie, a corporation, as set forth in the annexed petition; and have you then and there this writ.

Witness Charles F. Vogel, clerk of our said court, with
[SEAL.] the seal thereof hereto affixed, at office, in the city of St. Louis, this 17th day of May, in the year of our Lord eighteen hundred and eighty-three.

CHAS. F. VOGEL, *Clerk.*

*Sheriff's Return.*

Executed this writ in the city of St. Louis on the 18th day of May, 1883, by delivering a copy of the writ and petition as furnished by the clerk to John C. Hall, the within-named defendant.

ISAAC M. MASON, *Sheriff*,
By M. W. KATOVSKY, *D'p'ty*.

And afterwards, to wit, at the June term, 1883, of the circuit court, city of St. Louis, the following proceedings were had in said cause, to wit:

*Mo. for Sec'y for Costs Filed.*

TUESDAY, *June 5th*, 1883.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCES CONTRE L'INCENDIE, a Corporation.
17 *vs.*
JOHN C. HALL.

Motion for security for costs filed.

*Mo. to Dismiss Overruled.*

WEDNESDAY, *June 6th*, 1883.

LA CONFIANCE COMPAGNIE, etc.
*vs.* } 61719.
JOHN C. HALL.

It is ordered that upon plaintiff depositing with the clerk of this court the sum of $50.00 as security for costs in this cause the motion to dismiss filed herein be overruled, and, the plaintiff having made such deposit, it is now ordered that said motion to dismiss be overruled.

*Order of Removal.*

FRIDAY, *June 8th*, 1883.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCES L'INCENDIE
*vs.* } 61719.
JOHN C. HALL.

On petition of defendant, by attorney, this day filed it is ordered that on said defendant giving bond in the sum of $250.00, to be approved by the court, that the clerk of this court forthwith certify to the circuit court of the United States for the eastern district of Missouri a full, true, and complete transcript of the record and proceed-

ings in this cause as fully as the same remain on file and of record in his office. Bond approved and filed.

Which petition for removal and bond are respectfully in words and figures as follows, to wit:

*Petition for Removal.*

Circuit Court, City of St. Louis, State of Missouri. June Term, 1883.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, a Corporation, Pl'ff, *vs.* JOHN C. HALL, Def't. } No. 61719. R. 5.

Petition for removal of cause.

19 The petition of defendant in aforesaid cause respectfully represents to the court that plaintiff herein is an alien, a citizen of France, and that defendant is a citizen of the State of Missouri; that the matter in dispute in aforesaid cause exceeds, exclusive of costs, the sum of five hundred dollars, & that all the matters in controversy herein can be fully determined between plaintiff and defendant, and defendant herewith tenders a sufficient bond as required by the statute of the United States for such case made and provided.

Wherefore defendant prays that an order be entered herein transferring and removing this cause to the circuit court of the United States for the eastern district of Missouri.

GIVEN CAMPBELL,
*Att'y for Def't.*

*Bond.*

Know all men by these presents that we, the undersigned, John C. Hall, as principal, and John P. Harrison, as surety, are held and firmly bound unto the La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie in the full and just sum of two hundred and fifty dollars; for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this the 8th day of June, A. D. 1883.

The condition of the above obligation is such that whereas the said John C. Hall has obtained an order transferring and removing to the circuit court of the United States for the eastern district of Missouri a certain cause wherein said La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie is plaintiff and said John C. Hall is defendant:

Now, if the said defendant shall enter in such circuit court,
21 on the first day of its next session, a copy of the record in said cause and pay all costs that may be awarded by the said circuit court if such court shall hold that such suit was wrongfully

or improperly removed thereto, then said obligation to be void; otherwise to remain in full force and effect.

In witness whereof we have hereunto set our names and affixed our seals the day and year aforesaid.

JOHN C. HALL. [SEAL.]
JNO. P. HARRISON. [SEAL.]

Approved by the court June 8th, 1883.
Attest: CHAS. F. VOGEL, *Clk.*

STATE OF MISSOURI, } ss:
*City of St. Louis,* }

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, certify the above and foregoing to be a full, true, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 21st day of June, A. D. 1883.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

And afterwards, to wit, on the 25th day of September, A. D. 1883, there was filed in said cause an answer and counter-claim in words and figures following, to wit:

23 *Answer and Counter-Claim.*

In the Circuit Court of the United States, Eastern District of Missouri.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, a Corporation, Plaintiff,
*vs.*
JOHN C. HALL, Defendant. } No. —.

Now comes defendant, and for his answer to the petition of plaintiff herein filed admits the incorporation of plaintiff as alleged; admits that he was appointed general agent of plaintiff in the States and Territory mentioned in the petition; admits that he executed the bond described in the petition, but he denies that he received after the execution of said bond, by virtue of his official position as aforesaid as general agent of plaintiff, the sum of fifteen thousand dollars for which he has not accounted to said company, the plaintiff. He denies that he has ever at any time wrongfully failed, neglected, or refused, or that he now so neglects or refuses, to account and pay over to plaintiff the sum of fifteen thousand dollars or any sum whatsoever; and he denies that at any time whatsoever he has ever converted said sum of money, the property of plaintiff, to his own use, or that he is indebted to plaintiff in any sum or on any account whatsoever; and he denies that he has broken any of the conditions of his bond aforesaid; and he denies that he has caused damage to

plaintiff in any sum or on any account whatsoever, but he says that he has fully accounted to and paid to plaintiff all moneys coming into his hands as its agent since the execution of said bond to which plaintiff was or is justly entitled.

And, for further answer, by way of fuller answer, defendant says that on or about the 14th day of February, 1881, he was ap-
25 pointed by plaintiff as its general agent for the transaction of a general fire-insurance business in the States of Missouri, Tennessee, Arkansas, Kansas, and Colorado and in the Territory of New Mexico, with general powers, among others, to procure applications for insurance, to receive and collect premiums upon policies of insurance issued upon such applications, to collect premiums upon renewals of same and upon existing policies, to appoint agents and establish agencies for said plaintiff in said States and Territory, and that at about the same time plaintiff and defendant entered into a written contract, executed in duplicate and mutually delivered to each other, a duplicate original of which is herewith filed, marked "A;" and defendant says that under said contract he was appointed and confirmed by plaintiff as its general agent, under the name of John C. Hall & Co., for said States and Territory, with his office and the seat of his agency at the city of St. Louis, Missouri, with powers as aforesaid; that it was agreed by said plaintiff in said contract that defendant should receive for his services as general agent (30%) thirty per cent. up to 31st of December, 1881, and (28%) twenty-eight per cent. for the years following upon the amount of premiums collected upon the business of plaintiff in said States and Territories, deduction being made for premiums paid by plaintiff for reinsuring its risks, as provided in article 7th of said contract, and also (10%) ten per cent. of the net profits of his agency for each year, as provided in article 9 of said contract; and defendant says that under the provisions of said contract he was required to give bond and security to plaintiff in the penal sum of twenty-five thousand dollars as guarantee of his faithful management; and defendant says that he did execute said bond, and same was accepted by plaintiff, with the sureties thereon, and same is the bond sued on in this suit;
27 and defendant says it was provided by said contract that he should render plaintiff monthly statements, and he says that he did render such statements to plaintiff, but that in all such statements he by error and omission failed to charge to plaintiff his commissions upon the amount of premiums collected, in this, that he by error and omission deducted from the amount of premiums collected the amounts of premiums returned upon cancelled policies which under the terms of said contract he was entitled to embrace in the amount of premium upon which his commissions were chargeable, as provided in article seven of said contract; but defendant says that he was and is entitled to receive the commissions upon such cancellations, and in his account of December 8th, 1882, he charged up same in the full sum of eighty-three hundred and eighty-nine $\frac{8}{100}$ ($8,389.08) dollars to the plaintiff, and in same account he charged up to plaintiff the further sum of five thousand (5,000) dollars, being the amount of commissions under his contract estimated for the

three months from July first, 1882, when he was compelled to cease business for plaintiff by reason of its breach of contract in failing to give defendant three months' notice that it intended to quit business; and defendant says that said company did fail to give him notice, but by its default and breach of contract, as will be hereafter more fully stated, compelled him to quit business under his contract without any notice and three months before it had any right to under its contract; and defendant says that said sum of five thousand dollars is and was the sum and value to him of the commissions under his contract for said three months, and he was entitled to charge same up as commissions upon breach of such contract upon business for said three months; and defendant says that after
29 making said charges in said account he did have in his hands the sum of two thousand $\frac{14}{100}$ (2,000.14) dollars; that on said 8th day of December, 1882, he did remit to said plaintiff said sum of money and forwarded to plaintiff his said account of said date showing said charges and said balance; and defendant says that he is in no manner indebted to plaintiff in any sum, and says that he ought to be hence discharged with his costs.

And, further answering, and by way of counter-claim, defendant says that in rendering said account of December 8th, 1882, and sending said sum of money ($2,000.14) as aforesaid he did not intend to waive his claim nor did he waive his claim for damages for the wilful and malicious and wrongful and illegal breach by plaintiff of its contract heretofore referred to as marked "A," whereby defendant, by reason of the wrongful default and acts of plaintiff in summarily and without proper cause ending said contract without notice to him, suffered great loss, damage, and expense, and injury to his business, in this: And defendant, referring herein to the terms of said contract aforesaid, says that it was also provided by said contract, in article 14, that plaintiff should always have the right to revoke said contract, but in case the revocation of the contract should not be caused by the misconduct of defendant or by *vis major* the plaintiff should be bound to give to defendant at least three months' notice of its intention before said termination of said contract; all of which, together with the other provisions of which contract, will more fully and at large appear from said contract marked "A," to which reference is hereby made for said purpose; and defendant says that at the time stated he did enter into the service of plaintiff as such general agent for the States and Territory aforesaid and faithfully devoted his time and attention to plaintiff's business
31 within said States and Territory and established his office at the city of St. Louis, and that he continued his services to said company until the 27th day of July, 1882, when, by reason of the bad faith and misconduct of plaintiff towards him and its malicious violation of its contract, he was compelled to cease to do business for it under its contract with him, in this, that under and in pursuance of the statutes of the State of Missouri as contained in the Revised Statutes of the State of Missouri, chapter 119, containing the insurance laws of said State, plaintiff was required annually,

on or before the first day of July, to file in the office of the superintendent of the insurance department of said State a statement, under the oaths of its president and secretary, showing the condition of its affairs on the first day of January preceding, in form as provided in sections 6003 and 6004 of said Revised Statutes, and unless same was done and said statement was satisfactory to said superintendent and in compliance with said law of insurance it was provided by said insurance law that it should be unlawful for plaintiff to carry on its business in said State, and that, under the provisions of said chapter, defendant was forbidden to carry on or transact business for said plaintiff in said State without a certificate, as provided by said insurance law, from the said superintendent of insurance stating that such plaintiff had complied with the said law, all of which will more fully appear from said law of Missouri, which is hereby plead; that although plaintiff was well aware of its duty under the said insurance law of said State of Missouri to make such statement to said superintendent, and that in default thereof it and this defendant, as its agent, would be excluded from doing business in said State as contemplated by
33 said contract "A," and although notified in ample time and requested by defendant to make and return such statement to said superintendent on or before the *the* 1st day of July, 1882, yet plaintiff wholly neglected and maliciously failed to make and return the said statement required of its affairs and conditions on the 1st day of January, 1882, and in default thereof the said superintendent of the insurance department for said State, on the 27th day of July, 1882, notified defendant to cease doing business for plaintiff in the State of Missouri, where the seat of his agency and chief office were fixed by said contract; and thereupon defendant says that he was *was* by such wrongful and malicious breach of contract and by its default and negligence forced to cease business for it in the States and Territory stated in said contract, and that in and by such acts and default and neglect plaintiff ceased to do business in said State of Missouri without any notice to defendant whatsoever, which action of plaintiff forced defendant to cease to do business for it in the other States and Territory in the scope of his agency; and defendant says that on account thereof and by reason thereof he was and is greatly wronged, injured, and damaged by plaintiff, in this, that, relying upon the faithful compliance of plaintiff with its contract with him, he had with great energy devoted his time to extending and establishing the business of plaintiff in said States and Territory and went to great expense in preparing maps of towns and cities therein to enable him to conduct its business with safety; that he purchased at great expense to himself large supplies of stationery, registers, reports, applications for insurance, and other things of like kind, all prepared with reference to the conduct of business of plaintiff, all of which were and became worthless to defendant upon said default and
35 malicious & wrongful breach of contract of plaintiff as aforesaid and involved great loss to defendant; and defendant says, relying upon plaintiff's observance of its said con-

tract, he paid out and expended large sums of money in said States and Territories in paying taxes and license fees required by law to be paid by plaintiff for the privilege of doing business therein, and that at great expense and labor he employed special agents to establish agencies for plaintiff in said States and Territories and in endeavoring to build up its business, and spent large sums of money in payment of the travelling expenses and hotel bills of said agents, all of which was lost to defendant by reason of plaintiff's wrongful, illegal, and malicious breach of contract as aforesaid, whereby he was and is greatly damaged.

And defendant says that by reason of plaintiff's malicious and wrongful acts in causelessly terminating said contract without notice as aforesaid to him he has been otherwise greatly injured and damaged in his business, for all which he claims damages, and says that by said several matters and things as aforesaid he has sustained damages in the full sum of twenty-five thousand dollars, for which he asks judgment against the plaintiff by way of counter-claim.

And, for a further counter-claim and answer, defendant says that after said contract, marked "A," had been entered into by and between him and plaintiff that said plaintiff did, through its agents and without the knowledge of this defendant, reinsure the insurance contracts and risks of a certain insurance company against fire, called the Berlin-Cologne Insurance Company, outstanding in the State of Colorado; and defendant is informed, and so alleges the fact to be,
37 that said plaintiff, in consideration of said reinsurance of said contracts and risks of the said Berlin-Cologne Insurance Company, did receive by way of premium from said Berlin-Cologne Insurance Company a large sum of money, to wit, the sum of fifteen thousand dollars, on which, under the terms of its contract aforesaid with defendant, it was in duty bound to pay to *plaintiff* the sum of twenty-eight per cent. as commission, or the sum of forty-two hundred dollars, but which it refuses to pay to *plaintiff* and for which *plaintiff* asks judgment.

Wherefore this defendant, having fully answered, prays judgment dismissing the demand of plaintiff against him with costs, and that he may have judgment in his favor upon his counter-claims in the sum — twenty-five thousand (25,000) dollars for damages, as alleged and claimed in his first counter-claim, and in the further sum of forty-two hundred dollars, damages, as alleged and claimed in his second counter-claim, and for all costs.

GIVEN CAMPBELL,
*Att'y for Defendant.*

And afterwards, to wit, on the 15th day of September, A. D. 1884, there was filed in said cause a reply in words and figures following, to wit:

*Replication.*

In the Circuit Court of the United States, Eastern District of Missouri.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, a Corporation, Plaintiff,
*vs.*
JOHN C. HALL, Defendant.

Now comes plaintiff, by leave of court, and files this its
39 reply to the new matter contained in defendant's answer to plaintiff's petition, and denies that defendant has fully or at all accounted to or paid plaintiff all moneys coming into his hands as its agent since the execution of the bond sued on in this case to which plaintiff was or is justly entitled.

Plaintiff denies that on or about the 14th day of February, 1881, defendant was appointed by plaintiff as its general agent for the transaction of a general fire-insurance business in the States of Missouri, Tennessee, Arkansas, Kansas, and Colorado and in the Territory of New Mexico; but plaintiff admits and avers that defendant was appointed such general agent by plaintiff on or before the 17th day of December, 1880, with general powers, among others, to procure applications for insurance, to receive and collect premiums upon policies of insurance issued upon such applications, to collect premiums upon renewals of same and upon existing policies, and to appoint agents for plaintiff in said States and Territory; but plaintiff denies that defendant was empowered to establish general agencies for plaintiff in said States and Territory.

Plaintiff admits that at about the time defendant was appointed its general agent as aforesaid plaintiff and defendant entered into a written contract, executed in duplicate and mutually delivered to each other, the duplicate original of which is filed with defendant's answer and marked "A," and that under said contract defendant was appointed and confirmed by plaintiff as its general agent, under the name of John C. Hall & Co., for said States and Territory, with his office and the seat of his agency at the city of St. Louis, Missouri, with powers as aforesaid.

Plaintiff denies that it was agreed by it in said contract that
41 defendant should receive for his services as general agent (30%) thirty per cent. up to the 31st of December, 1881, and (28%) twenty-eight per cent. for the years following upon the amounts of premiums collected upon the business of plaintiff in said States and Territory, deductions being made for premiums paid by plaintiff for reinsuring its risks, as provided by article 7 of said contract, or otherwise; but plaintiff admits that by said contract defendant was to receive (10%) ten per cent. of the net profits of his agency for each year, as provided in article 9 of said contract. Plaintiff admits that under the provisions of said contract defendant was required to give bond and security to plaintiff in the penal sum of

twenty-five thousand dollars as a guarantee of his faithful management; admits that defendant did execute said bond, and that the same was accepted by plaintiff, with the sureties thereon, and is the bond sued on in this suit. Plaintiff admits that it was provided by said contract that defendant should render plaintiff monthly statements, and that he did render such statements to plaintiff; but plaintiff denies that in all or any of said statements defendant by error or omission failed to charge plaintiff commissions on the amount of premiums collected, or that he by error or omission deducted from the amount of premiums collected the amounts of premiums returned upon cancelled policies, or that under the terms of said contract defendant was entitled to brace the same in the amount of premium upon which his commissions were chargeable, as provided in article seven of said contract.

Plaintiff denies that defendant was or is entitled to receive any commissions upon such cancellations, but admits that in his account of December 8th, 1882, he charged up same in the full sum of eighty-three hundred and eighty-nine dollars and eight
43 cents to the plaintiff, and that in the same account he charged up to plaintiff the further sum of five thousand dollars as damages for an alleged breach by plaintiff of said contract; but plaintiff avers that said charges and said account of December 8th, 1882, are false, fictitious, fraudulent, and without warrant in law or under said contract, as hereinafter stated, and that said pretended account and said pretended and false and fraudulent charges therein were promptly repudiated and rejected as soon as the same came to knowledge of plaintiff and defendant at once notified thereof, as hereinafter set forth.

Plaintiff denies that said sum of five thousand dollars was the amount of the estimated commission under plaintiff's contract for the three months from July first, 1882, or that defendant was then compelled to cease business for plaintiff by reason of any breach of contract on its part in failing to give defendant three months' notice that it intended to quit business or otherwise; and plaintiff denies that it did fail to give defendant notice, or that by any default or breach of contract on its part it compelled defendant to quit business under his contract without any notice for three or any months before it had a right under its contract, and plaintiff denies that said sum of five thousand dollars is or was the sum of or value to defendant for said three months, or that defendant was entitled to charge the same or any part thereof as commissions upon the alleged breach of said contract upon the alleged business for said three months.

Plaintiff admits that after making, among other *other* false, fictitious, and unwarranted charges, the aforesaid false, fictitious, and fraudulent charges defendant had in his hands, among other moneys of plaintiff, the sum of two thousand dollars and fourteen
45 cents, and that on or about the 8th day of December, 1882, he remitted to plaintiff said sum and forwarded to plaintiff his said alleged account of said date, showing said alleged charges and said alleged balance, all of which were promptly repudiated

and rejected by plaintiff as aforesaid; and plaintiff denies that defendant is in no manner indebted to plaintiff, or that he ought to be hence dismissed with his costs.

And, for its reply to the new matter contained in the first counterclaim of defendant's answer, plaintiff denies that defendant in rendering said alleged account of December 8th, 1882, did not intend to waive or did not waive his alleged claim for damages for the alleged willful and malicious and wrongful and illegal breach by plaintiff of its contract in the answer referred to as marked "A;" and plaintiff denies that it ended said contract without notice to defendant, or that it so ended said contract by any wrongful default or acts on its part, either summarily or without proper cause or otherwise, or that defendant thereby suffered great or any loss or damage or expense or injury to his business or otherwise.

Plaintiff admits that by said contract marked "A" it was provided in article 14 thereof that plaintiff should always have the right to revoke and annul said contract, but denies that in case the revocation of the contract should not be caused by the misconduct of defendant or by *vis major* the plaintiff should be bound to give defendant at least three months' notice of the intention before said termination of said contract.

Plaintiff admits that defendant at the time aforesaid entered into the service of plaintiff as its general agent for the States and Territory aforesaid, but denies that it has any knowledge or information sufficient to form a belief whether or not defendant faith-
47 fully devoted his time or attention to plaintiff's business within said States and Territory, but admits that he devoted his time and attention to plaintiff's business. Plaintiff admits that defendant established his office at the city of St. Louis and devoted his services to plaintiff until the 27th day of July, 1882, but denies that defendant was then or ever compelled to cease to do business for plaintiff by reason of any bad faith or misconduct of plaintiff towards defendant or any violation of its said contract with defendant.

Plaintiff admits that chapter 119 of the Revised Statutes of Missouri contains the insurance laws of the State of Missouri, and that under said laws plaintiff was required annually, on or before the first day of July in each year, to file in the office of the superintendent of the insurance department of said State a statement under oath showing the condition of its affairs on the first day of January preceding, in form as provided in sections 6003 and 6004 of said Revised Statutes, and that unless the same was done and said statement was satisfactory to said superintendent or in compliance with the said insurance law that it should be unlawful for plaintiff to carry on its business in said State, and that under the provisions of said chapter defendant was forbidden to carry on or transact business for said plaintiff in said State without a certificate, as provided by said insurance law, from said superintendent of insurance stating that plaintiff had complied with said law. Plaintiff admits that it was aware of its duty under the said insurance law of the State of Missouri to make said statement to said superintendent, and that in

default thereof it and defendant as its agent would be excluded from doing business in said State, and that it failed to make and return on or before the first day of July, 1882, the said statement
49 required of its affairs and condition on the first day of January, 1882; but plaintiff denies that it was notified or requested in ample time or otherwise by defendant to make or return such statement to said superintendent on or before the first day of July, 1882, which it was defendant's duty to do, as hereinafter set forth, or that its failure to make said statement was malicious; on the contrary, plaintiff avers that its failure to make and return said statement was the result of accident and mistake of its officers and agents, as hereinafter set forth, and the failure of defendant to notify plaintiff in time or at all to make or return said statement.

Plaintiff admits that in default of said statement the said superintendent of the insurance department of the State of Missouri on the 27th day of July, 1882, notified defendant to cease doing business for plaintiff in the State of Missouri, where the seat of defendant's agency and chief office were fixed by said contract; but plaintiff denies that defendant was, by the alleged wrongful and malicious breach of contract set forth in the answer or by plaintiff's alleged default or negligence, forced to cease business for it in any of the States and Territory stated in said contract except the State of Missouri. Plaintiff denies that it ceased to do business in the State of Missouri without notice to defendant either in or by the alleged acts, default, or neglect of plaintiff set forth in the answer or otherwise, or that the alleged action of the plaintiff forced defendant to cease to do business for it in the other States and Territory in the scope of defendant's agency, or that on account thereof defendant was or is greatly or at all wronged or injured or damaged, either as set forth in said answer or otherwise, in the sum of twenty-five thousand dollars or any other sum whatever.

51 And plaintiff, for its reply to the new matter contained in the second counter-claim in defendant's answer, admits that after said contract marked "A" had been entered into by and between plaintiff and defendant it did, through its agents, reinsure the insurance contracts and risks of a certain insurance company against fire called the Berlin-Cologne Insurance Company, outstanding in the State of Colorado, but plaintiff denies that the same was done without the knowledge or consent of defendant, and denies that in consideration of said reinsurance of said contracts and risks of the said Berlin-Cologne Insurance Company it received, by way of premium, from said Berlin-Cologne Insurance Company the sum of fifteen thousand dollars or any other sum on which, under the terms of its said contract with defendant, it was in duty bound to pay to defendant the sum of twenty-eight per cent. as commission, but plaintiff admits that it received as premiums for said reinsurance from said Berlin-Cologne Insurance Company the sum of three hundred and twenty-six dollars and seventy-eight cents and no more.

Plaintiff, for its first separate reply and defence to the new matter contained in defendant's answer before the first counter-claim thereof,

says that by the terms of said contract marked "A," entered into between plaintiff and defendant as aforesaid, it was specially provided in the seventh, eighth, and ninth articles thereof that defendant was only to receive a commission of thirty per cent. until the 31st day of December, 1881, and of twenty-eight per cent. for the following years on the net amount of the premiums collected by him, excluding therefrom all and any commissions on the premiums returned to policy-holders on the cancellation of their policies, and excluding also all and any commissions on premiums paid by plaintiff
53 to reinsurers; and this plaintiff further says that by the terms of said contract it was specially provided that plaintiff should always have the right to annul and put an end to the same by giving defendant three months' preliminary notice of its intention so to do; that plaintiff, by a letter dated June second, 1882, duly notified defendant that he would be relieved from his functions of general agent of plaintiff at the expiration of three months from the reception by him of said letter, which said letter was received by defendant on the 17th day of June, 1882, and is not filed herewith because the same is in the possession of defendant. Plaintiff avers that by the reception of said letter by defendant on said 17th day of June, 1882, and the said terms of said contract, defendant's functions as general agent for plaintiff ceased on the 17th day of September, 1882; that defendant continued to act as the general agent of plaintiff in the States and Territory aforesaid, under said contract, to the 27th day of July, 1882, receiving his commissions therefor under said contract. Wherefore plaintiff says that defendant had no right in his alleged and pretended account of December 8th, 1882, and now has no right to charge or claim from plaintiff any sum whatever as commissions on premiums returned by him on the cancelled policies of plaintiff or as estimated commissions on business of the months of July, August, and September, 1882, as in said answer alleged or otherwise.

And, for a second separate reply and defense to the new matter contained in defendant's answer before the first counter-claim thereof, plaintiff says that by said contract, marked "A," entered into between plaintiff and defendant as aforesaid, it was specially provided in the tenth article thereof that defendant, as the general agent of plaintiff, should send monthly to plaintiff
55 a schedule of cancelled risks, accompanied by the original cancelled policies of plaintiff returned by the assured, and that in the eleventh article thereof it was also provided that financial statements should be made by defendant, as the general agent of plaintiff, to plaintiff at the end of each month, and that the balance due by defendant, as shown by each of said statements, should be remitted by defendant in the course of the following months to the trustees of plaintiff in New York city; that in accordance with said provisions of said contract defendant, as the general agent of plaintiff, at the end of each and every month, from and including the month — December, 1880, to and including the month of June, 1882, prepared or caused to be prepared and sent to plaintiff financial statements in writing of his

accounts as general agent of plaintiff, each and every one of which were accompanied by the aforesaid schedules of cancelled risks, and were received by plaintiff in due course of mail; that in each and every one of said statements defendant, in accordance with the construction put on said contract by him and plaintiff, credited himself and charged plaintiff with his commission on the net premiums only collected by him, excluding commissions on any and all premiums returned by him on cancelled policies of plaintiff, which statements are herewith filed and marked, respectively, Exhibits 1 to 19, inclusive; that said charges and credits so made and stated by defendant in said statements of his accounts with plaintiff have never been disputed by plaintiff; on the contrary, plaintiff avers that the same have been ratified and acquiesced in by it as in accordance with the terms of said contract and defendant's and plaintiff's understanding and construction thereof; and plaintiff avers that by reason thereof the accounts between plaintiff and defendant up to and including the month of June, 1882, so far as defend-
57 ant's charges and credits on account of his commissions under said contract, either on premiums returned by him on cancelled policies of plaintiff or otherwise, are concerned, have been stated and agreed upon in writing between plaintiff and defendant, and that defendant cannot claim credit in this action, either by way of defence or otherwise, for any commissions or premiums returned by him on cancelled policies of plaintiff before the end of the month of June, 1882.

And, for a third separate reply and defence to the new matter contained in defendant's answer before the first counter-claim thereof, plaintiff says that by said contract marked "A," entered into between plaintiff and defendant as aforesaid, it was specially provided in the tenth article thereof that defendant, as the general agent of plaintiff, should send monthly to plaintiff a schedule of cancelled risks of plaintiff, accompanied by the original cancelled policies returned by the assured, and that in the eleventh article thereof it was also provided that financial statements should be made by defendant, as the general agent of plaintiff, to plaintiff at the end of each month, and that the balance due by defendant as shown by each of said statements should be remitted by defendant in the course of the following month to the trustees of plaintiff, in New York city; that, in accordance with said provisions of said contract, defendant, as the general agent of plaintiff, at the end of each and every month from and including the month of December, 1880, to and including the month of June, 1882, prepared or caused to be prepared and sent to plaintiff financial statements in writing of his accounts as agent of plaintiff, each and every one of which were accompanied by the aforesaid schedules of can-
celled risks and were received in due course of mail; that
59 in each and every one of said statements defendant, in accordance with the construction put upon said contract by him and plaintiff, charged plaintiff and credited himself with his commissions on the net premiums only collected by him, excluding commissions on any and all premiums returned by

him on cancelled policies of plaintiff, which statements are herewith filed and marked, respectively, Exhibits 1 to 19, inclusive; that in accordance with said statements balances were remitted from time to time by defendant to plaintiff's trustees, in New York city, and were by plaintiff received; that said charges and credits so made and stated by defendant have never been disputed by plaintiff; on the contrary, plaintiff avers that the same have been ratified and acquiesced in by it as in accordance with the terms of said contract and the construction always put upon the same by plaintiff and the construction put upon the same by defendant up to and including the month of June, 1882; that by the terms of said contract it was specially provided that plaintiff should always have the right to annul and put an end to the same by giving defendant three months' preliminary notice of its intention so to do; that plaintiff, by a letter dated June second, 1882, duly notified defendant that he would be relieved from his functions as general agent of plaintiff at the expiration of three months from the reception by him of said letter, which said letter was received by defendant on the 17th day of June, 1882, and is not filed herewith because the same is in the possession of defendant; that defendant continued to act as the general agent of plaintiff until the 27th day of July, 1882, and as such continued to collect and receive premiums on the business of plaintiff in said States and Territory up to said date; that
61 defendant never prepared or sent to plaintiff any statement of his accounts, as general agent of the plaintiff, for the month of July, 1882, until about the 8th day of December, 1882, when he prepared or caused to be prepared and sent to plaintiff a certain false, fictitious, fraudulent, and pretended account for the month of July, 1882, in which defendant fraudulently and without warrant of law under said contract and contrary to the course of dealing, as aforesaid, between plaintiff and defendant under said contract, and contrary to the aforesaid construction put upon the same by plaintiff and defendant in their course of dealing thereunder, as aforesaid, charged plaintiff and credited himself, among other false, fictitious, fraudulent, and pretended charges and credits, with the sum of $8,389.90 as commissions on cancelled policies of plaintiff, which said pretended account and said pretended charges and credits therein contained were at once repudiated and rejected by plaintiff, and defendant at once notified thereof. Wherefore plaintiff says that by making and forwarding to plaintiff, as aforesaid, the said statement of accounts marked Exhibits 1 to 19, as aforesaid, and the aforesaid course of dealing between plaintiff and defendant in reference thereto and defendant's commissions from and including the month of December, 1880, and including the month of June, as aforesaid, the defendant is estopped to claim or maintain before the court that he is entitled, either as a defense to plaintiff's petition or otherwise, to be credited or to charge plaintiff with any commissions whatsoever on premiums returned by him on cancelled policies of plaintiff.

And, for a fourth separate reply and defense to the new matter contained in defendant's answer and in the first counter-claim thereof,

wherein defendant seeks to recover from plaintiff twenty-five
63 thousand dollars damages for an alleged breach by plaintiff of said contract, marked "A," entered into between plaintiff and defendant as aforesaid, plaintiff says that by the terms of said contract it was specially provided in the tenth article thereof that defendant, as general agent of plaintiff under said contract, should carefully and in due time advise plaintiff by letter or telegram, as the necessity or exigency of the case should require, of all facts, acts, and events relating to his agency; that by the aforesaid laws of the State of Missouri plaintiff was required to make out and send to the superintendent of the insurance department on or before the first day of July in each year, as aforesaid, the aforesaid statement showing the condition of plaintiff on the first day of January preceding; that plaintiff, by accident and mistake of its officers, agents, and servants and without any design to injure defendant or to put an end to said contract or to deprive defendant of his right under said contract to continue to do business as plaintiff's general agent in the State of Missouri, failed to make or forward to said superintendent of insurance for said State of Missouri on or before the first day of July, 1882, the said statement showing its condition on the first day of January, 1882; that plaintiff's failure to make said statement was known to defendant on and before said first day of July, 1882, and in ample time to have notified plaintiff and had the same made by plaintiff before the 27th day of July, 1882; that defendant carelessly, negligently, and contrary to the said terms of said contract, or intentionally and fraudulently, failed and neglected to give plaintiff any notice at its home office in Paris, where its president and secretary lived, of its said failure to make said statement so that the same could be made, and plaintiff
65 avers that it never received any notice from defendant at its home office in Paris, France, where its president and secretary resided and where alone said statement could be made, of its failure to make said statement; that, said statement not having been made, said superintendent of said State, on the 27th day of July, 1882, notified defendant to cease doing business for plaintiff in the State of Missouri, and that defendant thereupon ceased doing business for plaintiff in said State; that on or about the 28th day of July, 1882, and after it was too late to have said statement prepared at the home office of plaintiff, at Paris, France, defendant, in a letter dated July 28th, 1882, wrote to Monrose & Mulville, general agents of plaintiff, in New York city, informing them that said superintendent of insurance for the State of Missouri had, on July 27th, 1882, notified defendant to cease doing business for plaintiff in the State of Missouri for the reason that plaintiff had failed to file said statement showing its condition on the first day of January, 1882; that immediately thereupon said Monrose & Mulville, general agents of plaintiff as aforesaid, wrote to said superintendent of insurance for the State of Missouri offering him a duly certified copy of a similar statement filed by plaintiff with the insurance department of the State of New York showing its condition on the first day of January, 1882, made and verified as required by the said law of Mis-

souri, and requesting that plaintiff be reinstated in the State of Missouri, which offer was refused and said request denied by said superintendent; that said Monrose & Mulville at said time also wrote to defendant requesting him to make said offer of said certified copy of said statement to said superintendent of insurance for the State of Missouri, which he failed and neglected to do; that on said 27th day of July, 1882, defendant,
67 for want of said statement of said certified copy thereof, was compelled under the said law of Missouri to cease doing business for plaintiff as its general agent in the State of Missouri, but not elsewhere in the limits of his agency; that on said day defendant voluntarily, except as to said State of Missouri, as aforesaid, ceased to do business as general agent of plaintiff under said contract in all the other States and Territory embraced in his agency; that by the terms of said contract it was specially provided in the fourteenth article thereof that plaintiff should always have the right to annul and put an end to the same by giving defendant three months' preliminary notice of its intention so to do; that plaintiff, by a letter dated June second, 1882, duly notified defendant that he would be relieved from his functions as general agent of plaintiff at the expiration of three months from the reception by him of said letter, which said letter was received by defendant on the 17th day of June, 1882, and which is not filed herewith because the same is in the possession of defendant; that by sending and reception of said letter as aforesaid plaintiff avers that said contract and defendant's rights thereunder ceased on the 17th day of September, 1882; that by said contract it was further specially provided in said article that in no case should the cessation of said contract thereinbefore in said article provided give rise to suits for damages by either plaintiff or defendant.

Plaintiff further avers that by said contract it was further specially provided in the sixth article thereof that defendant should provide and be liable for on his own account and at his own risk under said contract for all the expenses incurred by him as general agent of plaintiff except lawyers' fees in protecting the interests of
69 plaintiff, including all expenses for maps, stationery, registers, reports, applications for insurance, and things of like kind prepared by him with reference to the conduct of the business of plaintiff, moneys expended by defendant in paying taxes and license fees required by law to be paid, moneys paid by defendant in employing special agents, travelling expenses, hotel bills, &c., as will fully and at large appear by said contract, which is hereby pleaded.

Wherefore plaintiff says defendant is not entitled to maintain, and by said contract and the facts aforesaid is barred from maintaining, the action of damages against this plaintiff in the first counter-claim of the answer set forth in the sum of twenty-five thousand dollars or any other sum whatever.

MADILL & RALSTON,
*Attorneys for Plaintiff.*

And afterwards, to wit, on the 9th day of October, A. D. 1885, and at a regular stated term, being the September term, of said court the following further proceedings were had and appear of record in said court, to wit:

*Case Called.*

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, Plaintiff,
*vs.*
JOHN C. HALL, Defendant. } 2247.

Now come the parties, by their attorneys, the plaintiff by Madill and Ralston and the defendant by Given Campbell, and this cause being regularly called for trial and both parties being ready, it is ordered that a jury come, and thereupon come said jury, to wit, Alvin Moore, George W. Lord, J. R. Shorkley, James L. Jones,
71 W. W. Stead, Samuel S. Stanton, S. D. Williams, C. D. Harper, W. J. Pennington, Adolph Klauber, William F. Cox, and W. J. Bulte, twelve good and lawful men duly empaneled and sworn to well and truly try the issues joined herein; and thereupon the evidence was partly heard, but not being concluded at the hour of adjournment it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, on the 10th day of October, A. D. 1885, the following further proceedings were had and appear of record in said court, to wit:

*Verdict and Judgment.*

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, Plaintiff,
*vs.*
JOHN C. HALL, Defendant. } 2247.

Now again come the parties, by their attorneys, the plaintiff by Madill and Ralston and the defendant by Given Campbell, and also come the jury herein as on yesterday, to wit, Alvin Moore, George W. Lord, J. R. Shorkley, James L. Jones, W. W. Stead, Samuel S. Stanton, S. D. Williams, C. D. Harper, W. J. Pennington, Adolph Klauber, William F. Cox, and W. J. Bulte, who, after hearing the evidence and arguments of counsel and receiving the charge of the court, return the following verdict: "We, the jury, find for the plaintiff in the sum of two thousand and seven dollars and thirty-five cents. Wm. F. Cox, foreman."

It is therefore considered by the court that the plaintiff, La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, have and recover of the defendant, John C. Hall, as well the said sum of two thousand and seven dollars and thirty-five cents, the
73 damages aforesaid by the jury assessed, as also the costs herein expended, and have thereof execution.

And afterwards, to wit, on the 5th day of November, A. D. 1885 the following further proceedings were had and appear of record in said court, to wit:

*Amended Judgment.*

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|---|---|
| La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, Plaintiff, *vs.* John C. Hall, Defendant. | 2247. |

It is ordered that the judgment heretofore entered herein on October 10th, 1885, be set aside and the following entered in lieu thereof:

It is therefore considered by the court that the plaintiff, La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, have and recover of the defendant, John C. Hall, the sum of twenty-five thousand dollars, the penalty of the bond and writing obligatory sued on, to be discharged, however, upon the payment by defendant to plaintiff of the sum of two thousand and seven dollars and thirty-five cents ($2,007.35), the damages aforesaid by the jury assessed, as also the costs herein expended, and it is ordered that execution issue therefor.

It is further ordered by the court that the plaintiff's motion for a new trial herein be, and the same is hereby, overruled.

And afterwards, to wit, on the 4th day of January, A. D. 1886, the following further proceedings were had and appear of record in said court, to wit:

75 *Appeal Bond, Approved and Filed.*

| | |
|---|---|
| La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, Plaintiff, *vs.* John C. Hall, Defendant. | 2247. |

Now comes the plaintiff, by its attorneys, and presents to the court its bill of exceptions, which is allowed, signed, and made a part of the record in this cause.

He also presents to the court a writ of error to remove this cause to the Supreme Court of the United States and a citation citing and admonishing the said defendant to be and appear at said Supreme Court, to be begun and held at the city of Washington on the second Monday of October next, which said writ of error is allowed and said citation signed by the judge.

Plaintiff also presents to the court its appeal bond in the penal sum of one thousand dollars, which bond is approved and ordered to be filed as part of the record herein.

Said bill of exceptions is in words and figures following, to wit:

*Bill of Exceptions.*

UNITED STATES OF AMERICA,
*Eastern District of Missouri,* } ss:

In the Circuit Court of the United States for the Eastern District of Missouri.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, a Corporation, Plaintiff,
*vs.*
JOHN C. HALL, Defendant.

77 Be it remembered that on the trial of this cause the following proceedings were had:

Plaintiff, to establish the issues in its behalf, introduced testimony as follows:

It read in evidence the following bond:

*Bond.*

Know all men by these presents that I, John C. Hall, of St. Louis, Missouri, and the following persons as sureties of said John C. Hall, viz., T. C. Thompson & B. R. Davis, of Galveston, Texas, are firmly held and firmly bound unto the La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie, located at the city of Paris, France, in the penal sum of twenty-five thousand dollars (gold), lawful money of the United States of America, to be paid to said company or to its successors or assigns; the which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 17th day of December, in the year of our Lord one thousand eight hundred & eighty.

Whereas the above-bounden has been appointed general agent of the said company for the States of Missouri, Kansas, Tennessee, Arkansas, Colorado, and New Mexico, now, therefore, the conditions of this obligation *is* such that if the said general agent shall faithfully account for and pay to the said company all monies that shall be paid to him belonging to the said company, and shall in all things well and truly, faithfully and honestly, discharge the duties of general agent of said company, such as they appear from their agreement between them and said company, then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered.

JOHN. C. HALL.
T. C. THOMPSON.
B. R. DAVIS.

Witnessed by—
W. K. HALL.
E. E. RICE.

79 Plaintiff also read in evidence the following contract:

*Traité pour L'Installation d'une Agence Générale de La Confiance dans le District de St. Louis des Etats Unis de l'Amerique du Nord.*

Entre la Compagnie Anonyme d'Assurance Contre L'Incendie "La Confiance" dont le sieze social est a Paris, rue Favart No. 2, representée par Monsieur Emile Burkhardt, son directeur & Monsieur —— |—— administrateur, specialement autorisées aux fins des présentes d'une part et Messieurs John C. Hall & Co., citoyens Américains demeurant à St. Louis d'autre part fla été convenue ce qui suit.

Article 1er.

La Compagnie d'Assurances Contre L'Incendie "La Confiance" nomme Messieurs John C. Hall & Co. ses agents generaux pour la representer a Saint Louis.

Le siéze de l'agence sera à St. Louis et comprendra une circonscription composée des Etats suivants:

Missouri, Tennessée, Arkansas, Kansas, Colorado, et Territorie du Nouveau Mexique.

Article 2.

Les pouvoirs des agents généraux seront precisés et definis par la procuration que leur sera delivrée par "La Confiance," ces pouvoirs pourront toujours être modifiés.

81 Messieurs John C. Hall & Co. devront se renfermer pour l'exécution de leur mandat dans la limite des pouvoir resultant de leur procuration et se conformer fidélement aux instructions qu'ils recevront de "La Confiance."

Article 3.

Les formules de polices seront fourniés par "La Confiance" à ses agents généraux, qui devrant rendre compte de leur emploi.

La souscription des dites polices, l'encaissement des primes, le reglement des sinistres et généralement tous les actes et écrits, engageant "La Confiance" seront signés par les agents généraux, avec cette mention qui précédra leur signature "au mon et par procuration de La Confiance."

Les agents généraux demeureront personellement responsibles des erreurs par eux commises dans leurs opérations.

Article 4.

Amoins d'autorisation speciale, les agents généraux ne pourront déroger aux clauses générales de la formule des polices imprimées, qui leur seront fournies par "La Confiance."

Même dans le cas oú les plains ne seraient pas excedés, les agents généraux pourront toujours faire réassurer les risques les quels ils jugeront "La Confiance" trop engagée.

Article 5.

83 Messieurs John C. Hall & Co., designeront les sous agents, autorises a operer dans les localities autre que St. Louis, mais comprises dans leur circumscription. Ils pourront déléguer à ces agents le droit de souscrire des polices ou nom de "La Confiance."

Ils devront faire connaitre à "La Confiance" les localités dans lesquelles seront établies les sous agences et les noms des sous agents, lesquels opéreront d'ailleurs sous la responsabilité directe des Agents Generaux.

Article 6.

Moyamant les rénumérations ci-après fixcés. Messieurs John C. Hall & Co. restent chargés depourvoir à leurs frais et à leur risques a toutes les dépenses de l'agence and des sous agences de quelque nature qu'elles soient et notamment à tous les frais de publicité, de correspondance de bureaux, de traitement des employés, sous-agents, taxes de toute nature actuellement en rigueur et à tous frais généralement quelconques, sauf ceux specifiés ci-après. Ils prennent egalement a leur charge les frais de réglement de sinistres, les frais de justice ou d'avocats auxquels pourront donner lien la defense des interêts de la Compagnie dans le reglement des sinistres, seront considéres comme des accessoirs de ces mêmes sinistres et devront êtres remboursés aux agents au même titre and dans les memes conditions que les indemnites allouées aux assurés. Sous autres frais de reglement de sinistres seront a la charge des agents generaux.

Article 7.

85 Pour se couvrir des dites depenses et a titre de rénumération pour leurs paines and soins, Messieurs John C. Hall & Co. recevront annuellement.

1°. Une commission de 30% jusqu'au 31 Decembre 1881 et 28% pour les années suivantes sur le montant des primes nettes encaissées, c'est à dire deduction faites des primes payées aux réassureurs.

2°. Une part de 10% dans les benefices nets de l'agence, calcules comme il sera dit à l'article 9 ci-aprèes.

Article 8.

Il sera constitué à la cloture de chaque exercise au profit de l'exercise suivant, une reserve de risques en cours comprenant.

1°. 50% du montant des primes affeientes aux risques en rigueur au 31 Decembre de l'exercise clos-deduction faite des primes annullées.

2°. Le montant total des primes effeientes aux exercises ulterieurs, alors même que ces primes auvaient été encaissées par anticipation dans le cours de l'exercise clos.

3°. Le montant presumé des sinistres connus au 31 Decembre et non-reglés à cette date.

La reserve des risques en cours ainsi constituée au 31 Decembre

de chaque exercise, apportiendra à l'exercise suivant. Elle sera comprise dans la liquidation du dit exercise et reconstituée à nouveau à la fin de celui-ci sur les bases indiquiées par le présent article.

Article 9.

Les 10% sur les benifices alloués aux agents genereaux seront calculés et reglés à la fin de chaque exercise de la manière suivante.

87 On portera au credit du dit compte.

1°. La reserve pour risques en cours arrettée au 31 Decembre de l'année precedente.

2°. Le montant total des primes souscrites dans l'année deduction faite des primes annullées.

On portera au debit du même compte.

1°. La commission de 30% jusqu'au 31 Décembre, 1881, et 28% pour les années suivantes, alloué aux agents généraux, ainsi qu'il s'est dit à l'article 7.

2°. Le montant des sinistres reglés dans le cours de l'exercice, deduction faite de la part remboursée par les réassureurs.

3°. Le montant des frais de procés á la charge de " La Confiance " conformément á l'article 6.

4°. Les frais d'impression des polices fournies aux agents.

5°. La reserve pour risques en cours a constituer au profit de l'exercice suivant.

6°. On portera en outre au même debit les frais de publicité et autres alloués aux agents generaux, ainsi qu'il est dit á l'article 6.

La difference entre le débit et le credit du compte établi ainsi qu'il vient d'etre dit representera le benefice sur lequel 10% seront alloués a Messieurs John C. Hall & Co. Lorsqu'un exercice soldera en portes, il ne sera opéré par Messieurs John C. Hall & Co. aucun remboursement proportionnel, mais dans les exercises suivants, il ne leur sera fait aucune application de bénéfices avant que les portes eprouvées n'aient été compensées par les bénéfices ulterieurs.

Article 10.

89 Les agents generaux prennent l'engagement d'aviser soigneusement " La Confiance " par lettre ou par telegramme suivant le cas, de tous les faits, actes et evénements inté ressant l'agence.

Ils addresseront a " La Confiance " chaque semaine un bordereau detaillé des polices souscrites dans le cours de la semaine.

Ils addresseront chaque mois :

1°. Un bordereau resumé des assurances souverites dans la mois.

2°. Un bordereau des assurances annulleés, accompagné de l'original des polices annulleés et retireés des mains des assurés.

3°. Un bordereau des sinistres payés et pais accessoirs avec pièces á l'appui et un double de la quittance.

Ils se conformeront pour l'etablissement de ces diverses pièces aux instructions de la Compagnie et aux usages locaux.

En aucun cas l'expedition des pièces ne pourra étre retardée au delá d'un mois de leur date.

Article 11.

Des états de situation devront être etablis á la fin de chaque mois, et le solde en resultant devra être versé par les agents généraux dans le courant du mois suivant chez les trustees de la Compagnie a New York.

De son coté la Compagnie s'engage à tenir en temps utile à la disposition des agents généraux les sommes nécessaires pour assurer le reglement des sinistres duement léquidés.

Article 12.

91 Comme garantie de leur gestion, Messieurs John C. Hall & Co. devront dans le delay d'un mois, remettre entre les mains de la Compagnie un acte de caution de vingt-cinq mille dollars, signé par deux garants acceptés par " La Confiance."

Article 13.

La Confiance pourra en tout temps faire inspecter par un ou plusieurs délégués l'ágence de St. Louis, ainsi que les sous-agences locales.

Messieurs John C. Hall & Co. devront communiquer á ces délégués et leur faire communiquer par leurs sous-agents toutes les pièces, documents et renseignements dont il feront la demande.

Article 14.

La Compagnie " La Confiance " aura toujours le droit de mettre fin au mandat de Messieurs John C. Hall & Co.

Dans le cas où la cessation du mandat ne serait pas motiveè par des faits personnels a Messieurs John C. Hall & Co. ou de force májeure, la Compagnie devra en donner avis á ses agents généraúx, aux moins trois mois á l'avance.

Messieurs John C. Hall pourront de leur coté renoncer á leur mandat á charge egalement deprevenir la Compagnie trois mois d'avance.

En aucun cas la denonciation ci dessus prévue ne pourra donner lieu á aucuns dommages intérets de part ni d'autre.

Pendant les trois mois qui suivront la dénonciation Messieurs John C. Hall & Co. devront s'ils en sont requis donner tous
93 leur soins á la liquidation de leurs, opérations et faciliter la transmission de l'agence.

Quelque soit le moment de la cessation du mandat, Messieurs John C. Hall & Co. seront tenus de remettre fidélement a " La Confiance," ou a son représentant accredité á cet effet et á premierè requisition, la procuration contenant les pouvoirs, la correspondance, imprimés, controle des pleins, en un mot toutes les archives de l'agence.

Article 15.

Messieurs John C. Hall & Co. se reservent le droit de représenter

in Amérique d'autres compagnies d'assurances mais á la condition d'y étre expressement autorisés par " La Confiance."

Article 16.

Au cas ou Messieurs John C. Hall & Co. n'exploiteraient pas la totalité de leur circonscription á la satisfaction de la Compagnie; celle-ci se réserve le droit de crier des agences directes dans les localités ainsi negligeès.

Article 17.

En cas de difficultés auxquelles donneraient lieu l'interprétation, l'application ou l'exécution du present traité, les parties contractantes font attribution de jurisdiction aux tribunaux de Paris.

À cet effet, les parties réduisent á trois mois le délai de distance prévu par l'art. 1033 du code de procédure civil francais et
95 admettent le texte français comme base du présent contrat.

Soit en double á Paris le ——.

Le directeur, CH. FERRY. L'administrateur, BURCKHARDT.

Les agents generaux, JOHN C. HALL & CO.

97 Plaintiff then called I. D. FOULON, who, being duly sworn, testified as follows:

I am a lawyer by profession. I have seen the original in the French language of the paper which you hand me, and the paper you hand me is a translation of that original. French is my native language, and I made a systematic study of it. From 1870 until 1872 I occupied the position of professor of French of what was then called the Illinois State Industrial University, now State University of Illinois, at Champaign. I am thoroughly familiar with the language. French is my native language. I am tolerably familiar with the English language, and consider myself competent to translate both languages and have done so.

Q. Is this paper, then, a correct translation of the original?

A. Yes, sir; that is a correct translation of the original.

Plaintiff then offered the translation of the contract in evidence and the same was read.

Agreement for the establishment of a general agency of " La Confiance " in the district of St. Louis, in the United States of North America, between the joint stock company of insurance against fire " La Confiance," whose main office is in Paris, Favart street, No. 2, represented by Mr. Emile Burkhardt, its director, and Mr. —— ——, a manager specially authorized to execute this contract, of the first part, and Messrs. John C. Hall & Co., American citizen, residing in St. Louis, of the second part.

It has been agreed as follows:

99 Article 1st.

The company of insurance against fire, " La Confiance," appoints Messrs. John C. Hall & Co. its general agents to represent it at St. Louis.

The office of the agency shall be in St. Louis, and shall comprise a circumscription composed of the following States: Missouri, Tennessee, Arkansas, Kansas, Colorado, and the Territory of New Mexico.

Article 2.

The powers of the general agents shall be limited and defined by the power of attorney that shall be delivered to them by " La Confiance." These powers shall at all times be subject to modification.

Messrs. John C. Hall & Co. shall, in the execution of their mandate, remain within the limits of the powers resulting from their power of attorney, and shall faithfully comply with the instructions which they shall receive from " La Confiance."

Article 3.

The forms of policies shall be furnished by " La Confiance " to its general agents, who shall render an account of their use.

The underwriting of the said policies, the receipt of premiums, the settlement of losses, and generally all deeds and writings creating rights or liabilities for " La Confiance " shall be signed by the general agents, with this mention, which shall precede their signature: " In the name and under power of attorney of La Confiance."

The general agents shall remain personally responsible for errors by them committed in their transactions.

Article 4.

Except by special authorization the general agents shall
101 have no right to deviate from the general clauses of the form of the printed policies that shall be furnished them by " La Confiance." They shall underwrite no insurance on risks excluded by the instructions of " La Confiance."

They shall not exceed the limits as to amount of insurance fixed by the same instructions except as an exception and on condition that they shall immediately reinsure the excess in companies well known to be solvent and approved by " La Confiance."

Even though the maximum of insurance may not have been exceeded, the general agents may at all times reinsure the risks for which they may judge " La Confiance " to have too great a responsibility.

Article 5.

Messrs. John C. Hall & Co. shall designate the sub-agents authorized to operate in localities other than St. Louis, but comprised within their circumscription.

They may delegate to these agents the right of underwriting policies in the name of " La Confiance."

They shall make known to "La Confiance" the localities in which the sub-agencies shall be established and the names of the sub-agents, who in any event shall operate under the direct responsibility of the general agents.

Article 6.

In consideration of the remunerations hereafter fixed Messrs. John C. Hall & Co. remain held to provide at their own cost and risk for all the expenses of the agency and of the sub-agencies, of whatever nature they may be, and particularly for all expenses of ad-
103 vertising, correspondence, offices, salaries of employees, sub-agents, taxes of all kinds now in existence, and all other expenses whatever save those hereinafter specified. They also assume all costs of settlement of losses. The costs of courts or of lawyers which may arise through the defence of the interests of the company in the settlement of losses shall be considered as accessories of those same losses and shall be repaid to the agents under the same terms and conditions as the indemnities allotted to the insured. All other costs of settlement of losses shall be at the cost of the general agents

Article 7.

To cover the said expenses and by way of remuneration for their trouble and care Messrs. John C. Hall & Co. shall receive annually—

1st. A commission of 30% until the 31st of December, 1881, and 28% for the following years of the amount of net premiums received—that is to say, deduction being made of the premiums paid to reinsurers.

2nd. A share of 10% in the net profits of the agency calculated as provided in article 9 hereof.

Article 8.

There shall be constituted at the close of each business year for the benefit of the next business year a reserve for unexpired risks comprising—

1st. 50% of the amount of premiums belonging to risks in force on the 31st of December of the business year just closed, deduction being made of premiums cancelled.

2nd. The total amount of premiums belonging to subsequent business years, although these premiums may have been received in advance in the course of the business year just closed.

105 3rd. The estimated amount of losses known on the 31st of December and not settled on that date.

The reserve for the unexpired risks thus constituted on the 31st of December of each business year shall belong to the following business year. It shall be included in the settlement of the said business year, and reconstituted anew at the end of the latter upon the basis indicated by the present article.

Article 9.

The 10% on the profits allotted to the general agents shall be

calculated and settled at the end of each business year in the following manner:

There shall be placed to the credit of said account—

1st. The reserve for unexpired risks, as calculated on the 31st of December of the preceding year.

2nd. The total amount of the premiums underwritten during the year, deduction being made of the premiums cancelled.

There shall be placed in the debit of the same account—

1st. The commission of 30% up to the 31st of December, 1881, and 28% for the following years allotted to the general agents, as stated in article 7.

2nd. The amount of the losses settled during the business year, deduction being made of the share thereof reimbursed by the reassurers.

3rd. The amount of the costs of lawsuits borne by "La Confiance," according to article 6.

4th. The cost of printing the policies furnished the agents.

5th. The reserve for unexpired risks to be constituted for the credit of the next business year.

107 6th. There shall also be placed in the same debit the costs of advertising and others allotted to the general agents, as stated in article 6.

The difference between the debit and the credit of the account made up as just stated shall represent the profit, of which 10% shall be allotted to Messrs. John C. Hall & Co.

When the balance-sheet of any business year shall show a loss the Messrs. John C. Hall & Co. shall not make any proportional reimbursement, but in the following settlements they shall receive no share of the profits until the losses suffered shall have been compensated by subsequent profits.

## Article 10.

The general agents agree to carefully advise "La Confiance" by letter or telegram, according to circumstances, of all the facts, acts, or events relating to the agency.

They shall each week address to "La Confiance" a detailed memorandum of the policies written during the week. They shall address each month—

1st. A summary memorandum of the risks underwritten during the month.

2nd. A memorandum of risks cancelled, accompanied with the original of the policies cancelled and withdrawn from the hands of the assured.

3rd. A memorandum of the losses paid and accessory costs, with vouchers and a duplicate of the receipt.

They shall comply in the preparation of these different documents with the instructions of the company and the local customs.

In no case shall the sending of documents be delayed more than one month from their date.

Article 11.

Balance-sheets shall be prepared at the end of each month,
109 and the balance shown thereby to be on hand shall be paid over by the general agents during the following month to the trustees of the company in New York.

Upon its part the company agrees to keep at the proper time at the disposal of the general agents the sums necessary for the settlement of losses duly adjusted.

Article 12.

As a guarantee of their management Messrs. John C. Hall & Co shall within one month place in the hands of the company a bond in the sum of twenty-five thousand dollars, signed by two securities, accepted by "La Confiance."

Article 13.

"La Confiance" may at all times cause the St. Louis agency and the local sub-agencies to be inspected by one or more delegates.

Messrs. John C. Hall & Co. shall communicate to these delegates and cause to be communicated to them by their sub-agents all the papers, documents, and information for which they may ask.

Article 14.

The company, "La Confiance," shall always have the right to put an end to the mandate of Messrs. John C. Hall & Co.

In case the cessation of the mandate should not be caused by facts personal to Messrs. John C. Hall & Co. or by circumstances over which the company shall have no control the company shall be bound to give its general agents notice at least three months in advance.

Messrs. John C. Hall & Co. may on their part give up their mandate on condition, also, that they notify the company three
111 months in advance.

In no case shall the notice above provided for give rise to any claim for damages on either side.

During the three months which shall follow the notice Messrs. John C. Hall & Co. shall, if so required, give all their attention to the settlement of their transactions and facilitate the transmission of the agency.

Whenever the mandate shall terminate Messrs. John C. Hall & Co. shall be bound to faithfully remit to "La Confiance" or its representative accredited for this purpose and on first request the power of attorney containing the powers, the correspondence, printed matter, policy register—in a word, all the archives of the agency.

Article 15.

Messrs. John C. Hall & Co. reserve the right to represent in America other insurance companies, but on condition that they be thereto expressly authorized by "La Confiance."

Article 16.

In case the Messrs. John C. Hall & Co. should not actively occupy the whole of their territory so as to satisfy the company it reserves the right to establish direct agencies in the localities so neglected.

Article 17.

In case of differences to which the interpretation, the application, or the execution of the present agreement might give rise the contracting parties attribute jurisdiction to the tribunals of Paris.

To this end the parties reduce to three months the delay of
113 distance provided by art. 1033 of the French Code of Civil Procedure and admit the French text as the basis of the present contract.

Made in duplicate, at Paris, the——

The director: (Signed) BURKHARDT.

The manager: (Signed) CH. FERRY.

The general agents: (Signed) JOHN C. HALL & CO.

Mr. CAMPBELL (counsel for defendant): I admit the most of that to be correct, but a portion of it I do not think is literally correct, or that it conveys the sense of the document.

Mr. MADILL: We claim it to be entirely correct.

Plaintiff next offered an account under date of July, 1882, which by the pleadings is referred to as having been sent forward in December, 1882.

The COURT: That is the last account forwarded?

Mr. MADILL (counsel for plaintiff): Yes.

115 *Cancellations.*

| | |
|---|---|
| 1880. | |
| June | 738 26 |
| July | 702 17 |
| Aug. | 656 65 |
| Sept. | 756 55 |
| Oct. | 969 87 |
| Nov. | 1,497 55 |
| Dec. | 1,160 44 |
| 1881. | |
| Jan'y | 1,577 66 |
| Feb. | 694 65 |
| M'ch | 1,342 49 |
| Ap'l | 1,336 37 |
| May | 1,140 93 |
| June | 723 03 |
| July | 1,101 40 |
| Aug. | 651 68 |

| | | |
|---|---|---|
| Sept. | 936 79 | |
| Oct. | 1,907 79 | |
| Nov. | 1,227 92 | |
| Dec. | 607 54 | |
| | | 19,729 74 |
| 1882. | | |
| Jan'y | 1,218 03 | |
| Feb'y | 1,681 29 | |
| M'ch | 1,897 09 | |
| Ap'l | 1,392 | |
| May | 1,685 28 | |
| June | 948 32 | |
| | | 8,822 01 |
| $19,729.74 @ 30% | | 5,918 92 |
| 8,822.01 @ 28% | | 2,470 16 |
| | | $8,389 08 |

*Policies and Renewals Canceled and Returned Herewith.*

| Renewals. | Policies. | When canceled. | | | Return premium. |
|---|---|---|---|---|---|
| | | Month. | Day. | Year. | Paid. |
| | 2106 | | | | 46 35 |
| | 7022 | | | | 6 48 |
| | 6137 | | | | 2 63 |
| | 5200 | | | | 34 75 |
| | 5202 | | | | 24 15 |
| | 5383 | | | | 6 85 |
| | 5385 | | | | 16 65 |
| | 4112 | | | | 2 60 |
| | 1647 | | | | 3 |
| | 4313 | | | | 8 35 |
| | 4623 | | | | 8 75 |
| | 6294 | | | | 11 25 |
| | 6297 | | | | 19 75 |
| | 6460 | | | | 31 25 |
| | 6652 | | | | 33 35 |
| | 6654 | | | | 36 50 |
| | 6718 | | | | 16 65 |
| | 6719 | | | | 37 50 |
| | 6863 | | | | 32 |
| | 7011 | | | | 120 |
| | 7012 | | | | 31 25 |
| | 7014 | | | | 62 50 |
| | 7017 | | | | 67 50 |

*Policies and Renewals Canceled and Returned Herewith*—Continued.

| Renewals. | Policies. | When canceled. | | | Return. premium. |
|---|---|---|---|---|---|
| | | Month. | Day. | Year. | Paid. |
| | 7109 | | | | 50 |
| | 7160 | | | | 55 |
| | 7161 | | | | 60 |
| | 6206 | | | | 20 |
| | 6204 | | | | 34 35 |
| | 6129 | | | | 26 65 |
| | 6017 | | | | 20 |
| | 6013 | | | | 21 25 |
| | 6010 | | | | 15 |
| | 5850 | | | | 15 40 |
| | 5844 | | | | 26 |
| | 5655 | | | | 26 25 |
| | 5654 | | | | 6 |
| | 5650 | | | | 6 25 |
| | 5442 | | | | 39 37 |
| | 5432 | | | | 27 50 |
| | 6128 | | | | 7 50 |
| | 6650 | | | | 20 |
| | 7016 | | | | 15 |
| | 7110 | | | | 22 50 |
| | 4114 | | | | 7 80 |
| | 6542 | | | | 14 |
| | 7179 | | | | 10 |
| | 7216 | | | | 115 45 |
| | 6707 | | | | 22 |
| | 7114 | | | | 6 |
| | 7134 | | | | 75 |
| | 6342 | | | | 78 35 |
| | 6988 | | | | 34 50 |
| | 5730 | | | | 19 40 |
| | 6921 | | | | 18 75 |
| | 7000 | | | | 8 75 |
| | 7101 | | | | 7 50 |
| | 7208 | | | | 18 75 |
| | 7207 | | | | 35 |
| | 7205 | | | | 36 |
| | 7057 | | | | 38 75 |
| | 6998 | | | | 18 75 |
| | 7209 | | | | 6 25 |
| | 7210 | | | | 3 75 |
| | 7206 | | | | 31 25 |

*Policies and Renewals Canceled and Returned Herewith*—Continued.

| Renewals. | Policies. | When canceled. | | | Return premium. |
|---|---|---|---|---|---|
| | | Month. | Day. | Year. | Paid. |
| | 7145 | | | | 11 40 |
| | 7146 | | | | 26 25 |
| | 7147 | | | | 18 75 |
| | 7006 | | | | 23 75 |
| | 6669 | | | | 18 |
| | 6999 | | | | 5 50 |
| | 6771 | | | | 10 |
| | 4207 | | | | 50 |
| | 6610 | | | | 12 40 |
| | 6025 | | | | 3 60 |
| | 7198 | | | | 56 25 |
| | 7173 | | | | 45 |
| | 7175 | | | | 15 |
| | 7150 | | | | 39 |
| | 5768 | | | | 5 65 |
| | 6236 | | | | 2 40 |
| | 7197 | | | | 12 |
| | 6917 | | | | 3 |
| | 7060 | | | | 20 |
| | 7148 | | | | 9 |
| | 7169 | | | | 10 |
| | 7003 | | | | 25 |
| | 7086 | | | | 50 |
| | | | | | $2,202 53 |
| Forward | | | | | $2,202 53 |
| | 6987 | | | | 56 25 |
| | 6913 | | | | 22 90 |
| | 5909 | | | | 13 50 |
| | 6705 | | | | 21 70 |
| | 6620 | | | | 43 10 |
| | 6780 | | | | 50 20 |
| | 5519 | | | | 12 50 |
| | 4813 | | | | 3 75 |
| | 6995 | | | | 16 50 |
| | 6996 | | | | 23 |
| | 6997 | | | | 7 50 |
| | 7393 | | | | 40 |
| | 7195 | | | | 18 75 |
| | 7094 | | | | 20 |

*Policies and Renewals Canceled and Returned Herewith*—Continued.

| Renewals. | Policies. | When canceled. | | | Return premium. |
|---|---|---|---|---|---|
| | | Month. | Day. | Year. | Paid. |
| | 7098 | | | | 18 75 |
| | 6993 | | | | 36 |
| | 6994 | | | | 7 50 |
| | 7090 | | | | 11 25 |
| | 6473 | | | | 20 |
| | 7223 | | | | 30 |
| | 7220 | | | | 25 |
| | 6802 | | | | 12 |
| | 7149 | | | | 7 |
| | 6615 | | | | 25 |
| | 7103 | | | | 35 |
| | 7183 | | | | 64 |
| | 6949 | | | | 13 |
| | 6879 | | | | 45 |
| | 7043 | | | | 5 |
| | 6342 | | | | 78 35 |
| | 5599 | | | | 17 25 |
| | 7175 | | | | 15 |
| | 7173 | | | | 45 |
| | 6669 | | | | 18 |
| | 7043 | | | | 11 47 |
| | 7044 | | | | 11 47 |
| | 7035 | | | | 56 |
| | | | | | $3,159 22 |

(Here follows statement marked page 116.)

117 Mr. MADILL (counsel for plaintiff): We may as well have it understood that in this final account Mr. Hall (defendant) has charged the company with commissions on return premiums, which he says he had neglected to charge the company with before, to the amount of $8,000, and has also charged the company with $5,000 as the amount he would have earned if the company had run until the 17th of December instead of ending the 17th of July. I suppose Mr. Campbell (counsel for defendant) will admit these 19 exhibits were made up by direction of Mr. Hall (defendant), and that the amounts indicated on them as the balance were forwarded to the company for each month except for April, May, and June,

1882. A portion of these 19 exhibits are in French, and I had them translated by Mr. Foulon.

The COURT: If I understand you in this final account, there was $5,000 charged for an alleged breach of contract?

Mr. CAMPBELL: It relates to the value of the contract during the five months.

The COURT: One item is on the cancellations and one upon unearned premiums. You agree there are two items in dispute. First, Mr. Campbell claims, inasmuch as they did not give him three months' notice, he is entitled to damages; second, that he omitted in his former accounts an item to the amount of $8,000, to which he is entitled.

The WITNESS: I made a translation of the French portions of this account. The figures were copied by clerk of Mr. Madill's and compared. I verified them afterwards.

Mr. MADILL: I desire to offer these accounts in evidence.

Mr. CAMPBELL: I object to them so far as any of the footings conflict with the original.

They were then read.

(Here follow statements marked pages 119 to 144, inclusive.)

145 & 146 *La Confiance Insurance Company of Paris in Account with John C. Hall and Comp., Gen'l Agents at St. Louis, Mo., for the Month of January*, 1882.

| Dr. | | | Cr. | | |
|---|---|---|---|---|---|
| Commission on net premiums at 28 % | | 2.360 40 | Premiums, as per abstracts | 9,647 97 | |
| | | | Less cancellations and return premiums, as per list | 1,218 03 | |
| | | | | | 8,429 94 |
| Losses as follows: | | | Sight drafts on trustees | 1,672 66 | |
| No. 2729, J. M. Pitchard and Co. | 1,138 55 | | " " | 1,138 55 | |
| 4608, Jameson Bros. | 1,323 33 | | " " | 1,972 | |
| 2462, R. B. and Annie B. Snowden | 165 56 | | " " | 1,178 50 | |
| 3993, Mrs. M. A. Archias | 12 | | " " | 4,942 | |
| 3066, D. C. Bufford | 1,178 50 | | " " | 4,500 | |
| 5219, Muldoon and Sharp | 342 15 | | " " | 1,323 33 | |
| 3829, H. A. Thoms | 434 39 | | " " | 1,800 | |
| 4702, Sam. Morris | 150 | | | | 18,527 04 |
| 4624, L. Rosenheim, Bros. and Co. | 46 69 | | Commission on reinsurance, as per December ac., omitted | | 25 35 |
| 2802, " " | 93 37 | | Balance December ac., 1881 | | 5,067 15 |
| 3576, Cherry O'Conner and Co. | 1,500 | | | | |
| 3577, " " | 2,000 | | | | |
| 3578, " " | 1,000 | | | | |
| 5348, Nance and Co. | 1,800 | | | | |
| 2670, Mack and Comp. | 488 80 | | | | |
| 5308, " " | 407 32 | | | | |
| 3042, Mrs. Mary Hunt | 6 | | | | |
| 4454, Pettes and Leathe | 4,942 | | | | |
| 5067, C. and L. Rose | 1,972 | | | | |
| | | 19,000 66 | | | |
| Remitted to trustees for December ac. | | 5,067 15 | | | |
| To balance ac. | | 5,621 27 | | | |
| | | 32,049 48 | | | 32,049 48 |
| | | | Balance Jan. ac. | | 5,621 27 |

[Endorsed:] Exhibit 14. Filed Sept. 16, 1884. A. P. Selby, clerk.

6—84

*La Confiance Insurance Company of Paris in Account with John C. Hall and Co., Gen'l Agents at St. Louis, Mo., for the Month of February*, 1882.

| Dr. | | | Cr. | | |
|---|---|---|---|---|---|
| Commissions on net premiums, 28% | | 1,883 45 | Premiums, as per abstract | 8,407 89 | |
| | | | Less cancellations and return premiums, as per list | 1,681 29 | |
| | | | | | 6,726 60 |
| Losses as follows: | | | | | |
| No. 286, Sheehan and Loler | 261 66 | | Sight drafts on trustees | 695 35 | |
| 2818, Hallack and Bro. | 2,000 00 | | " " | 2,000 | |
| 2970, Simon Rothschild | 258 75 | | " " | 1,554 17 | |
| 3402, A. Van Hall | 695 35 | | " " | 1,000 | |
| 3629, The St. Louis Distilling Co. | 962 17 | | " " | 1,419 35 | |
| 3690, M. Robeson | 400 | | | | |
| 3802, W. C. Wiley | 600 | | | | 6,668 87 |
| 4928, M. M. Buck and Co. | 238 24 | | Error in balance Dec. ac. | | 100 |
| 5298, Scarrit Furniture Co. | 592 | | Commission on $10 | | 3 |
| 4420, M. A. Jones and Co. | 660 70 | | Balance January ac. | | 5,621 27 |
| | | 6,668 87 | | | |
| Reinsuring No. 5958, Saint Paul, $300, 3% | 9 00 | | | | |
| Less commission | 2 52 | | | | |
| | | 6 48 | | | |
| Balance January ac. remitted to trustees | | 5,621 27 | | | |
| Balance | | 4,939 67 | | | |
| | | 19,119 74 | | | 19,119 74 |
| | | | Balance due comp. | | 4,939 67 |

[Endorsed:] Exhibit 15. Filed Sep. 16, 1884. A. P. Selby, clerk.

149 & 150 *La Confiance Insurance Company of Paris in Account with John C. Hall and Co., Gen'l Agents at St. Louis, Mo., for the Month of March,* 1882.

| | | | | | | |
|---|---|---|---|---|---|---|
| Commissions on net premiums, 28% | 2,225 77 | 2,225 77 | Premiums as per abstracts | 9,846 28 | | |
| | | | Less cancellations & return prem's | 1,897 09 | | 7,949 19 |
| Losses as follows: | | | | | | |
| No. 4180, J. R. Venable | 248 39 | | Sight drafts on trustees | 1,766 72 | | |
| 4978, F. E. Marion | 900 | | " " " | 900 00 | | |
| 5497, John E. Ligett | 1,766 72 | | " " " | 988 90 | | |
| 3651, August Wesche | 988 90 | | " " " | 2,196 40 | | 5,852 02 |
| 3411, E. Hook | 300 | | | | | |
| 3118, W. L. Davis | 220 59 | | Balance February % | | | 4,939 67 |
| 3529, Jemima Lindell | 72 50 | | | | | |
| 4419, W. A. Joyce | 227 42 | | | | | |
| 4265, W. A. Joyce | 650 | | | | | |
| 4536, George Naeter & wife | 550 | | | | | |
| 5546, Conrad Zwissler | 7 50 | | | | | |
| 5548, A. B. Gooch | 22 35 | | | | | |
| | | 5,954 37 | | | | |
| Reinsuring part of No. 6107½, $3,160 @ 1½, 1½, & 1% | 98 93 | | | | | |
| Less commission, 28% | 27 70 | | | | | |
| | | 71 23 | | | | |
| Attorney's fees, "John Phelan" | | 75 | | | | |
| Error in Bordereau No. 97, policy No. 5395 | 1 10 | | | | | |
| Less 28% | 31 | | | | | |
| | | 79 | | | | |
| Remitted to trustees for Feb. % | | 4,939 67 | | | | |
| Balance due comp., Mar. % | | 5,474 05 | | | | |
| | | 18,740 88 | | | | 18,740 88 |
| | | | Balance due comp | | | 5,474 05 |

[Endorsed:] Exhibit 16. March ac., 1882. Filed Sep. 16, 1884. A. P. Selby, clerk.

151 & 152 *La Confiance Insurance Company of Paris in Account with John C. Hall and Co., Gen'l Agents at St. Louis, Mo., for the Month of April*, 1882.

| Dr. | | | Cr. | | |
|---|---|---|---|---|---|
| Commissions on net premiums, @ 28 % | 1,918 75 | 1,918 75 | Premiums, as per abstracts | 8,244 70 | |
| | | | Less cancellations & ret. premiums | 1,392 00 | |
| | | | | | 6,852 70 |
| Losses as follows: | | | (Losses as follows:) | | |
| No. 5487, Deimel Bros. & Miller | 2,483 35 | | Sight drafts on trustees | 1,486 | |
| 4360, J. B. M. Kehlor | 2,300 | | " " | 1,288 22 | |
| 6070, Mrs. M. C. Hancock | 1,288 22 | | " " | 2,300 | |
| 3388, A. Emmerson & Co. | 1,486 | | " " | 875 | |
| 4135, Chas. Youngman | 875 | | " " | 2,483 35 | |
| 4255, The Columbus Mining Co. | 2,500 | | " " | 2,500 | |
| 4207, F. De Donato | 20 40 | | | | |
| 3791, J. H. Wear, Boogher & Co. | 12 | | | | 10,932 57 |
| | | 10,964 97 | Balance March ac. | | 5,474 05 |
| Remittance to trustees for Mar. ac. | | 5,474 05 | | | |
| Attorneys' fees in Jabez Smith case, No. 576 | | 28 25 | | | |
| Reinsuring No. 75045 | 13 25 | | | | |
| Policy enclosed less 28 % | 3 71 | | | | |
| | | 9 54 | | | |
| Balance due company, April ac. | | 4,863 76 | | | |
| | | 23,259 32 | | | 23 259 32 |
| | | | Balance | | 4,863 76 |

[Endorsed:] Exhibit 17. La Confiance, Avril, 1882. Filed Sept. 16, 1884. A. P. Selby, clerk.

(Here follow statements marked pages 153 to 156, inclusive.)

157 The COURT: This final account as rendered you have introduced?

Mr. MADILL: Yes.

The COURT: And you rest there?

Mr. MADILL: With a statement to the effect that the amount of money indicated in that account has not been remitted and whether it ought to have been remitted is to be determined by the construction which should be given the contract.

The COURT: You admit in the pleadings that the $2,000 were remitted?

Mr. MADILL: We admit that Mr. Campbell does not claim, nor is it claimed in the case, that we accepted this as a final account.

The COURT: That is the reason I asked the question. If you did that would end your case; but it is understood between you the dispute appertains to those two items alone?

Mr. MADILL: Yes.

The COURT: And the proof will be directed to those items?

Mr. MADILL: Before we pass from that, in order that there may be no misapprehension, defendant having sent that July account to plaintiff, the latter did not reject it, but is not to be bound by it.

The COURT: No; that would be the case but for the admission of Mr. Campbell and yourself in open court. It is understood, of course; otherwise it would be different. It is admitted that those are the two items, the points of difference between you, and those are the two items the jury will have to consider in the light of the testimony to be offered.

Mr. MADILL: Concerning this account for the month of July forwarded in December, 1882, your honor asked in respect of the two items in dispute. I gave you the two items. I should have
159 added a third, which for the moment escaped me—that is, I gave you the item $8,389.08, which was for cancellations on returned policies up to the month of July, and commissions on returned premiums for the month of July, the return being $1,468.21. As a matter of fact, it is $411.09, making the item on account of cancellations of policies $8,800.17, and I gave the other item, $5,000, for estimated premiums in which the business had not been concluded. I make that explanation to prevent confusion.

Plaintiff then called CHARLES CHRISTENSEN, who, being duly sworn, testified as follows:

I reside in the city of St. Louis and am secretary of the American Central Insurance Company of St. Louis. I have been in the fire-insurance business about 18 years and am familiar with the method of doing business here and throughout the country in fire insurance.

Q. I wish you to state to the court and jury what is meant by net premium in fire insurance.

Defendant's counsel objected to the question on the ground that this is not a case for the introduction of proof of usage. That contract is clear and needs no construction.

Mr. MADILL: I propose to prove by this witness that these reports were made in conformity with the custom universally recognized in this country in making returns between principal and agent where commissions are paid upon premiums.

MR. CAMPBELL: Before the court rules on that I would like to have Mr. Karst translate these two clauses of the contract.

The COURT: There is no difficulty in regard to it. Mr. Madill introduced this witness to prove to the court and jury the meaning of the phrase "net premiums" in the seventh clause of this contract. Objection is made, and that objection will be
161 sustained on the ground that the contract explains itself and does not require any extrinsic evidence in regard thereto.

To which action of the court in sustaining the objection of defendant's counsel and excluding the testimony offered plaintiff's counsel at the time duly exeepted.

At this point the plaintiff rested its case.

Thereupon the defendant, to support the issues in his behalf, called as a witness Mr. EMIL KARST, who, being duly sworn, testified as follows:

I am consular agent for France in St. Louis. I am a Frenchman and reasonably familiar with the English language. I have lived here forty years.

Q. I will ask you to look at this contract (being original contract between plaintiff and defendant), introduced in evidence by plaintiff), and translate the seventh clause.

A. (Reads, translating it:) "For the purpose of covering said expenses and as a remuneration for their labor and care Messrs. John C. Hall & Co. shall receive annually, first, a commission of thirty per cent. up to the 31st of December, 1881, and twenty-eight per cent. for the following years upon the amount of net premiums collected—that is to say, deductions being made of premiums paid to reinsurers."

Q. In the French language what is the meaning of those words? "Second. One part of ten per cent. in the net profits of the agency."

Mr. MADILL: Is that right? You say one part of ten per cent. Is it a share of ten per cent.?

WITNESS: Well, I have not seen the article, so therefore I will see what the whole of it is. (Examines contract.) I think a share is the meaning—a share of ten per cent. in the net profits of the agency, calculated as it will be stated in articles hereafter.

163 Q. In article nine, is it not?

A. Yes; in article nine hereafter.

Q. Hereafter?

A. Ci-apres.

Q. Hereafter?

A. Yes.

Q. Now, there is one other part I would like you to translate. Look at article 9 of the contract, clause 6 of the third subdivision, commencing with the words "Lorsque un exercise." Read that and translate it literally.

A. "Whenever a term." That is the nearest I can get to it in French. A stated term in our consular service. It means a quarter of a year or three months. I do not know whether that applies to insurance people or not, but it means a certain period, a fixed period understood between the parties. I think it comes nearest to the intention to say, "Whenever a term will show losses there will be taken by Messrs. John C. Hall & Co. no proportional pay, but in the following items there shall be made to them no allowance of profits before the losses incurred had been compensated by later profits."

Q. Now turn to article 11 and read that.

A. "Statements of the state of affairs shall be made at the end of each month, and the balance resulting therefrom shall be made by the general agents in the course of the following month to the trustees of the company at New York on her side or on its side The company on her part engages herself to hold at the disposal of the general agents the necessary sums to assure the settlement of losses duly adjusted and settled."

Q. Now, in this article 14, read the fourth clause.

A. "In no case can the notice hereinabove foreseen be the cause of any damages from one or the other parties."

Q. Is not "provided" the proper English word for "foreseen?"

A. No, sir.

165 Mr. CAMPBELL: I will read the letter Mr. John C. Hall wrote to the Confiance Insurance Co. on the 24th day of May, 1882:

"GENTLEMEN: Replying to yours of April 21 and May 5, will say 2606 is general agency No. 2904; also,

| | | | |
|---|---|---|---|
| 5548 | 5487 | 5497 | 4959 |
| 6152 | 9883 | 9895 | 7178 |

We regret this mistake and shall try in the future to be more careful. The upper numbers of the foregoing are the general agency numbers, and the other ones the policy numbers. We cannot always send receipts for losses with the proofs, as they are not always ready. We do notify you of all losses, and if notices do not reach you they must be lost in the mail. We mail you blanks from the insurance department of Missouri, Kansas, Arkansas, and Tennessee; don't remember whether they have been sent you or not. With high regards we remain,

Yours truly, JOHN C. HALL & CO.,
*General Agents.*"

Q. Now, will you translate that letter and read it to the jury—that is, the answer to the one just read?

A. —. "PARIS, *June* 16, 1882.

Messrs. John C. Hall & Co., general ag'ts, St. Louis, Missouri.

GENTLEMEN: We have the honor to acknowledge the receipt of your letters of the 24th and 26th of May last. We have taken note

of the advices of losses incurred by policies 5774, 5170, and 3842. Be so good as to give all your best care to the settlement of those losses and remit to us the proofs accompanying the receipts. We have also in our possession the vouchers for losses Nos. 4687 and 3773. We will beg you to be more careful in the drawing up of the notices, and to no longer use the words 'not total' and 'partial,' which are much too indefinite. We confirm on this subject our
167 preceding letters. Accept, gentlemen, our solicitations for the company."

For the company:

The director, C. W. MANY.

Q. I would like to have you translate this letter.

A.— "PARIS, *June 2nd*, 1882.

Messrs. John C. Hall & Co., general ag'ts, St. Louis.

GENTLEMEN: We have the honor to confirm, as per our letter of this date, in view of the great number of losses paid up to this date by the St. Louis agency and the bad results that continue to the company, our board of directors have decided unanimously to suppress it or that general agency entirely and in the shortest time. We have therefore the regret to inform you that, in conformity with article 14 of your contract, you will be relieved of your functions of general agents within three months after the receipt of these presents. Until the expiration of this delay or this time we will beg you to no longer write policies except such risks which are easily reinsured. By this same mail we direct Messrs. Mulrose & Mulville to take charge of the reinsurance of what you have in your portfolio, and we beg of you to be so good as to facilitate from now their task in giving them all necessary information that they may wish to ask of you. We would be grateful to you if, in accordance with article 14, before named, of your contract, you would have an understanding with Messrs. Mulrose and Mulville to stop your business as soon as possible—that is to say, even before the three months as they are defined by your contract. Accept, gentlemen, our greetings."

Signed for the company by the director general or man-
169 ager, and also one of the board of directors.

The director, E. L. SOLEM.

Au administrator, L. GRUMELL.

J. C. HALL, sworn and examined on his own behalf, testified as follows:

(By Mr. CAMPBELL:)

Q. Where do you reside?
A. St. Louis.
Q. How long have you lived here?
A. Nearly 6 years.
Q. What business were you in before you came here?
A. I was in the life-insurance business.

Q. Whereabouts?

A. At Galveston, Texas; several years previous to that in New Orleans.

Q. Were you ever in business anywhere else?

A. No, sir; never did business anywhere else.

Q. Were you born in Galveston, Texas?

A. No; I was born in Kentucky; I was raised in Carrollton, Carroll county; only lived South a few years.

Q. How long were you acquainted with The Confiance Insurance Company, the plaintiff in this case?

A. About June or July, 1880.

Q. Did you ever have any business transaction in relation to this Confiance Ins. Co.?

Plaintiff's counsel objected to the question.

Mr. CAMPBELL: I propose to show how Mr. Hall became the agent of the Confiance; that he paid Chittenden, who was the general agent of the company, $6,000 for the contract.

The COURT: I will rule that out. This is your contract, and you will have to stand by it.

Q. When did you take charge of the agency here under this contract?

A. I think in December, 1880, or January or February,
171 1881.

Q. What did you do when you took charge of that agency? Tell the jury what efforts you made, if any, to establish the agency.

A. I used my best efforts to establish the company in seven States that I was general agent for in the best manner possible. I wanted to put the company on a footing as a first-class company. A. I employed three special agents.

Objected to as irrelevant.

The COURT: That is altogether too remote to come into the question of damages.

Q. Mr. Hall, this contract offered in evidence as Exhibit A, was that the contract furnished you by the company?

A. Yes, sir; I presume so; it is signed by me.

Q. Can you read French?

A. No, sir.

Q. Did the company ever explain to you the meaning of that contract in any other way than the rendition of the contract to you?

A. No, sir.

Q. You made those statements offered in evidence from month to month during the time you had control of the business, did you?

A. Yes, sir.

Q. Will you take one of those statements and explain it to the jury? Look at the one for June, 1882, and explain that to the jury, and state how you came to calculate the amount of your commissions in the manner in which they are calculated, as per that account?

A. I do not understand the question.

The COURT: I suppose the counsel wishes to get at the one proposition, which it seems to me can be done more expeditiously, viz., you credited yourself with a certain amount of commissions. On what basis did you calculate them?

A. Then I made the correction when I found the error I had made.

173 Q. What error?

A. In charging up the commissions.

The COURT: You charged them with commissions in this account, didn't you? That is what Mr. Campbell asks.

A. There is a commission charged in here, but not on the proper amount; it is on $6,832.27 and ought to have been $7,781.09.

Q. Now explain why.

(By Mr. CAMPBELL:)

Q. Tell the jury on what state of facts these commissions you charged on the June report of 1882 were based.

A. That was commissions charged—charged here on net.

Q. What do you mean by net?

A. I took out the cancellations and reinsurance when I should not have taken it but for reinsurance.

Q. What?

A. When I should not have taken it out only for reinsurance; but I took out all cancellations and reinsurance.

(By the COURT:)

Q. Then the difference is you took the cancellations?

A. Yes, sir.

(By Mr. CAMPBELL:)

Q. And you think you ought not to have done it?

A. Yes, sir.

Q. Was that method followed in every one of these statements that you hold in your hand?

A. Yes, sir; those accounts never were closed up from the time I took the company until I gave it up; it was impossible to close them up. They were carried over from one month to the other until final account was rendered. The balance was taken and carried into the next account—sometimes three balances—and there never was a final account rendered until December, 1882.

Q. That is the final account offered in evidence?

A. Yes, sir.

Q. Now, is that final account offered in evidence here a correct account?

175 A. Yes, sir; a correct account—final account that I rendered, in which I correct all mistakes. I have specified 15 items, I think, that I found I had overlooked—difference in cancellations.

Q. Wherein does that account differ from the statement you have rendered?

A. I charged back commissions on cancellations in this.
Q. How much does that amount to as per that account?
A. $8,389.08.
Q. That covers what period?
A. From the time the first account was made, I presume, up to this date.
Q. What does the $1,468.21 mean? What is that?
A. That was the actually earned premiums paid on policies after the first of July for the month of July.
Q. Has that anything to do with cancellations?
A. No; that is cancellations; that has nothing to do with commissions on cancellations.
Q. Did you charge commissions on that?
A. This is charged straight to the company, $1,468.21. This account was made after I found this mistake, and therefore it is put in straight.
Q. Put in straight?
A. Yes, sir.
Q. No commissions taken off that?
A. No, sir; no commissions taken off that.
Q. How did you happen to make these mistakes during that time? Were you aware of your rights when you made those statements from month to month?
A. No, sir.
Q. Is the account that you have rendered there for these commissions on cancellations correct?
A. Yes, sir.
Q. Were you aware before the rendition of that June account, 1882, of your rights in the premises?
A. No, sir.
177 Q. How did you happen to make that mistake?
A. Well, it was the custom with my other companies that I represented—I just made them up like the others—just like I did for the other companies.
Q. Did the other companies you represented require you to pay all the expenses of the agency?
A. No, sir.
Q. This letter of the 24th of May, read in evidence, was sent by you to the company, was it?
A. Yes, sir.
Q. Did that contain the proper forms for a statement to be made to the insurance department of this State?
A. Yes, sir.
Q. Was that letter mailed?
A. Yes, sir.
Q. And postage prepaid?
A. Yes, sir.
Q. And properly addressed to the Confiance?
A. Yes, sir; they got it and acknowledged the receipt of it.
Q. Did you write to them on the 17th of July?
A. Yes, sir.
Q. Read the letter.

(Copy.)

ST. LOUIS, Mo., *July 17th*, 1882.

La Confiance Ins. Co., Paris.

GENTLEMEN: We beg to acknowledge the receipt of your several favors of June 2, 16, & 23rd.

We regret you feel called upon to reinsure this general agency & think you are making a grand mistake. You have not given the field a fair trial. There would be no English companies here to-day if they were to adopt such measures. They remain long enough to get well established & finally succeed.

We paid Mr. Chittenden, as you are aware, $6,000 for this general agency & have worked faithfully to build up a business for the Confiance, paying out all our profits doing so.

We have several thousand dollars in supplies on our hands, besides taxes advanced. It — no fault of ours if the company has been unsuccessful, for the very best Cos. that have been in the field for years are in the same condition. We were looking to the future for the business to pay, & now, just at the time the Co. is started, you decide to withdraw. We feel that we have been badly treated & will insist on being reimbursed for money paid out; hence our telegram to you offering to give up the agency now for $10,000. We expect to make $5,000 or $6,000 in July, August, & September by doing large business, & have stopped every expense. Then for supplies on hand & taxes paid you would really be giving us nothing in paying the $10,000. If you pay it we will just about get back what we paid Chittenden & for expenses & will have lost two years' time. We don't know what your ideas are or what Mes. Mulrose & Mulville will do about it.

We beg to enclose April & May accounts; will have a final settlement with trustees when the agency is closed & losses & other matters paid. We are waiting to hear from Mulrose & M.

We enclose proofs No. 5824, amounting to $2,909.50. There will be no loss under 6958; agent got up the policy without loss; also call your attention to adjustment of No. 4820, which saved the Co. $500.

We remain yours truly,

(Signed) JOHN C. HALL & CO.,
*Gen'l Agents.*

179 Q. You have examined and heard the letters read by Mr. Karst to the jury—two French letters?

A. Yes, sir.

Q. Were they received by you from the Confiance?

A. Yes, sir.

Q. Did you ever send them a copy of that letter? (Paper shown.)

A. Yes, sir.

Q. Is this the letter you received from the superintendent of insurance?

A. Yes, sir.

Q. Read that.

(Copy.)

STATE OF MISSOURI, INSURANCE DEPARTMENT,
ST. LOUIS, *July* 27, 1882.

Mess. John C. Hall & Co., gen'l agents of La Confiance Ins. Co. of Paris, France, St. Louis, Mo.

GENTLEMEN: The La Confiance Ins. Co. of Paris, France, having failed to file in this office its annual statement for the year ending December 31, 1881, as required by section 6005 of the Revised Statutes of the State of Missouri, you are hereby notified that the said company has no authority to do business in this State, & that the transacting of business in this State for the said company by you or by any other person will be in violation of law.

Respectfully,
(Signed) JOHN F. WILLIAMS,
*Sup't Ins. Dep't Mo.*

181 Q. When was that letter received by you?
A. July 27.
Q. Who was John F. Williams?
A. He was superintendent of insurance in the State of Missouri. When I received that letter I cabled the company at once.
Q. Have you a copy of the cablegram?
A. Yes, sir.

(By Mr. MADILL:)

Q. Did they get that cablegram?
A. I don't know whether they did or not.
Q. Was it returned to you?
A. No, sir.

(By Mr. CAMPBELL:)

Q. You sent it?
A. By the Western Union, prepaid, and addressed to La Confiance, Paris.

(The cablegram was read as follows:)

"Statement not being filed with Missouri department, have been notified to cease doing business. Have written.

HALL."

Q. Now, did you communicate with them after that, on the 17th of August?
A. Yes; I wrote them on the 17th of August, and have a copy of the letter here.
Q. What did that letter have to say?

Mr. MADILL: We object to this letter as irrelevant.
The COURT: This goes to the one point, I suppose. The notice of the termination of this agency was received when?

Q. When did you receive notice to terminate the agency?
A. I can't say.

Q. About what time?

A. I should say somewhere after the 20th of June.

A. In the ordinary course transmission from Paris?

A. Yes, sir.

Q. What effect did the suspension of your function as agent by the superintendent of insurance have on the business of this company in this and other States?

A. To stop at once. The principal office here was closed and we couldn't do anything in any other State.

183 Q. Did you have any evidence of that fact from those agencies?

A. Yes, sir.

Q. What was the character of that evidence?

A. I did, for instance, business up to the 27th of July—a pretty fair business, over $9,000 premiums. When the accounts came in they were expected to come in the usual course of the mail, the same as the previous months—the policies were all sent in cancelled. A great many agents sent in their supplies.

Q. Did you get any commissions on that July business?

A. No, sir. Well, they were all cancelled, of course. No; I lost the July business entirely; lost all the July business after I received the letter on the 20th of June. The company couldn't expect the three months to date from June 20th, because that was the middle of the month.

Q. In that letter they allude to Mulrose and Mulville as being charged to settle up this matter with you. Who were Mulrose and Mulville?

A. They were the general agents in New York for the Eastern and Middle States, and were recognized as representatives of the company in this country more than any other general agent; seemed to have charge. Mr. Mulrose was secretary of the board of trustees in New York.

Q. Is this company doing business in the United States now?

A. No, sir.

Q. When did it withdraw?

A. Some time in 1883.

Q. Did Mulrose and Mulville ever communicate with you what you were entitled to for three months after the date you received the letter in June or July, whatever it might be?

A. Yes, sir.

Mr. MADILL: What do you suppose to prove in that connection?

Mr. CAMPBELL: That Mulrose and Mulville were authorized by this company to settle with Hall for the amount due him for those three months, and that Mulrose and Mulville agreed with

185 Hall that it was worth $5,000 to him.

Mr. Madill, counsel for the plaintiff, objected to an offer of settlement as incompetent, irrelevant, and immaterial.

The COURT: The only difference is between a compromise and an ascertainment of fact independent of the terms of compromise. As

I understand it, these gentlemen were in New York representing this company in America, and were authorized to close up this agency and to settle all his affairs. The witnesses can state what the terms were if they made any.

Mr. MADILL: I understand it fell through.

WITNESS: No.

The COURT: What was said about the measure of damages and the terminating of this contract before the three months expired?

A. Mr. Mulville came here and said he was authorized by the company to settle with me. The company recognized they owed me something and he came out to settle it up, and he fixed the price himself. I didn't name any figure. He said he would fix the price himself at $5,000. If I was willing to take that and waive everything else, he was willing to close it up. I refused to accept it, and offered to arbitrate, which he would not do. He said he didn't recognize any other claim I had against the company except the three months' business, and he would pay that $5,000 for three months, and wouldn't recognize anything else; if I would accept $5,000 he would close it up.

Q. That is, you waive your other claim?

A. Yes, sir.

Mr. Madill, counsel for the plaintiff, moved to strike this testimony from the record, as nothing came of it.

The COURT: It stands as an admission from an agent of the company. I think I can treat that as an admission.

187 To which action of the court in refusing to sustain the motion to strike the testimony from the record the plaintiff at the time excepted.

(By Mr. MADILL:)

Q. What date do you fix for this?

A. I don't remember the date. It must have been some weeks after the 27th of July, August, or September. He came back the second time to see me about it.

Q. Did he attempt it the second time?

A. Yes; and I wouldn't take it, and I made another proposition to arbitrate, and he agreed to it and went so far as to choose arbitrators. I chose an insurance man and he chose George T. Cram, and they were to choose another.

(By Mr. CAMPBELL:)

Q. Now, will you tell the jury what your commissions on that business for that time were worth or would have been worth if it had gone three months?

A. I don't think there is any question but I could have made $5,000.

(By Mr. MADILL:)

Q. What are you talking about?

A. I mean the whole of the business.

Mr. MADILL: I object to the question as incompetent and irrelevant.

Objection overruled by the court; to which action of the court the plaintiff at the time excepted.

(By the COURT:)

Q. — is your estimate of the loss you sustained by reason of being prevented from going on with this work from the 27th of July up to the expiration of the three months?

A. For fulfilling the contract I could easily have made $5,000.

Q. In other words, you agreed with Mr. Mulville. He made an estimate. Did you think that too little or too much?

A. I agreed to accept that offer for that amount, and I told him I would accept it for that part of my contract.

Cross-examination by Mr. MADILL, counsel for the plaintiff:

189 Q. Now, do you say that you retained no money in your hands for commissions on the July business?

A. No, sir; I do not say that.

Q. You don't mean to be understood as saying that?

A. Not no money; no, sir.

Q. You don't mean to say the business of July was wiped out?

A. Not entirely; nearly all cancelled.

Q. Do you remember the amount of the premium account on which you obtained commissions for July?

A. No, sir.

Q. You made a statement, didn't you?

A. I haven't looked at it for some time. I can't remember.

Q. Well, tell the jury how much was left in your hands for the month of July—27 days after it was all wiped out, as you state.

A. What premiums were left?

Q. Yes.

A. I can't say unless I look at it again.

Q. Does this inform you? (Paper shown to witness.)

A. The amount of premiums—the cancellations—are $4,600; nearly $4,700, and the premiums are $9,700.

Q. Didn't you charge commissions and retain the money on $9,700 for July?

A. Certainly.

Q. Then it wasn't all wiped out?

A. No, sir.

Q. Was there any month during your agency that you did any such amount of business, in proportion, as you did up to the 27th of July?

A. Yes.

Q. When?

A. Lots of months it run up to that.

Q. When?

A. I don't remember the month.

Q. Can you take one of those accounts and show me how many there were?

A. The business was rendered all the time.

Q. Then the fact is premiums were received by you for business done by you in July and it wasn't wiped out, was it?

A. Here is March—$9,800.

Q. Find some other one.

191 A. April, $8,200; February, $8,400; January, $9,656; September, $9,813.

Q. That falls below?

A. No, sir; it is more.

Q. Take June, the month preceding.

A. June is always a very dull month.

Q. How much was it?

A. June, $7,781.

Q. Nearly $2,000 less?

A. Yes, sir.

Q. Well, then, you don't mean to be understood as telling the jury that your July business was wiped out?

A. Not entirely; no, sir.

Q. Did you charge 28 % and retain the money on $9,762.37 on premiums for the month of July—the 27 days of July?

A. Yes; certainly.

Q. And you have that money?

A. Then on the other side cancellations.

Q. As to that you have it?

A. That is entered like any other account.

Q. You charged those premiums?

A. Yes, sir.

Q. Now, that is so whether you cancelled the policies or not?

A. Yes, sir.

Q. You did not turn any money out of your pocket for cancelled policies?

A. No; certainly not.

Q. So that your July business which you say was wiped out gave you $2,739.46 for commissions?

A. Yes, sir; that is like the other accounts.

Q. Then you were mistaken in saying it was wiped out?

A. I didn't mean every policy was wiped out.

Q. Now, while you have that in your hand, you returned of the company's money $4,627.43?

A. Yes, sir.

Q. And didn't deduct any commissions on that amount, did you?

A. No, sir; I guess those are gross amounts.

Q. Look and see; don't guess.

193 A. That is all gross amount.

Q. You retained, then, your commissions on $9,762.30 premiums collected during the 27 days in July, 1882, didn't you?

A. Yes, sir; that is charged up there.

Q. You say charged up. Do you mean to say you didn't retain it?

A. Yes; I retained it, of course. The account shows for itself.

Q. Now, before leaving this account, you had in your hands, according to that monthly statement, for the month of April, 1882, $4,863.76, didn't you?

A. No; I didn't have that amount of money in my hand. I paid losses along during that time.

Q. Didn't you always draw on the trustees in New York for losses?

A. No, sir; if I had the cash I paid it myself.

Q. What do you claim as an offset for losses paid in April?

A. I can't tell unless my letters are examined.

Q. May?

A. The same way; losses, $5,100. I don't know when I paid them; might have been in April or May.

Q. What money did you pay them out of?

A. Out of this balance here.

Q. In each of those instances?

A. From money on hand. Losses were paid and charged up to the company.

Q. Then if you paid that money out of those balances how much did you have on hand when you made this account, including your $5,000 which you charge as damages and the $8,389.08 which you charge as back commission?

A. There is the amount; $2,000.

Q. You had $1,389.83, didn't you?

A. Do you mean to say I had that much for the company?

Q. You had that much money on hand, didn't you?

A. I had more than that.

Q. That you received on those premiums?

A. I had more than that.

195 Q. I will put the question in another form. When you concluded to charge $5,000 for your damages and $8,389.08 to correct errors which you say you made, it was because if you did not do that you would have been obliged to turn over to the company over and above what you had in fact turned over—$1,389.08, wasn't it?

A. If those charges were not there of course it would show a balance.

Q. But those charges being put in there reduced the whole balance, so that you had only to forward the company $2,000?

A. Yes, sir.

Q. Now, you have been an insurance man all your life, have you—that is, your business life?

A. No, sir.

Q. When did you begin it?

A. In August, 1875.

Q. For 10 years?

A. Yes, sir.

Q. You regarded yourself as up in it, didn't you?

A. Yes; I think I am pretty well posted.

Q. Sufficiently so to take the general agency of this company?

A. Yes, sir.

Q. You were familiar with the method of doing business throughout the country—insurance business?

A. Yes, sir.

Q. You understood the basis upon which commissions were paid, how general agents were paid by insurance companies, didn't you?

A. Yes, sir. Insurance companies made different kinds of contracts, at 30 or 28 %.

Q. Net premiums you understood to mean after deducting the premiums returned on cancellations, didn't you?

A. That is the way I made up the account.

Q. You so understood it, didn't you?

A. That was the custom; yes.

Q. You knew it to be the general custom?

A. That was the general custom.

197 Q. Now, hadn't you done business for this company prior to your contract with them?

Counsel for the defendant objected to the question as immaterial. The court sustained the objection; to which ruling of the court plaintiff's counsel then and there excepted.

Q. Mr. Hall, you say you can't read French?

A. No, sir.

Q. You had these reports made out in French, didn't you?

A. They were made first in French; afterwards in English.

Q. You had a man in your office who was a French scholar?

A. He could speak and write French; yes.

Q. He took these items from your books to make up his accounts?

A. Yes, sir. Well, he took the items; the account was made up. That account is not transcribed off in the book in the office.

Q. It is made up in the office?

A. Made up in the office.

Q. You paid these balances over on that basis?

A. They are carried from month to month.

Q. On the first of December, 1880, the balance at that time was $4,250.07?

A. Yes, sir.

Q. You knew when you made it up you had deducted the premiums returned on account of cancellations, didn't you, and that your commissions were computed on the balance?

A. That was the custom in that office.

Q. You forwarded that balance to the trustees?

A. I guess I did.

Q. You accounted for it on that basis?

A. Yes, sir.

Q. You paid some in January, didn't you?

A. Yes, sir.

Q. And forwarded that amount?

A. Yes, sir; either forwarded or paid it out for the company.

Q. You did that during the entire 19 months, didn't you?

199 A. Yes, sir.

Q. You were doing an insurance business for other companies at the same time, were you?

A. One other.

Q. When did you first discover your error that you speak of?

A. I don't remember the date, but I presume it was some time in July.

Q. You didn't discover it until after notice had been served upon you that the agency was to be cancelled, did you?

A. No, sir.

Q. Now, you got that notice on the 17th of June?

A. I don't remember. I suppose it must have been about that time.

Q. Is this your handwriting? (Paper shown to the witness.)

A. Yes, sir.

Q. Don't you in that letter acknowledge that you got that notice on the 17th of June?

A. Yes; I say so here.

Q. Does that refresh your recollection about it?

A. Yes; of course I got it.

Q. You got it on the 17th of June?

A. Yes, sir.

Q. Now, coming back to the last statement, when did you make that out?

A. I don't remember?

Q. When did you send it forward?

A. I don't remember. I only started here in December.

Q. You kept the run of your business, didn't you?

A. I can't remember when I sent that forward.

Q. Whose handwriting is that in?

A. Mine. I copied it.

Q. Haven't you a recollection of what time?

A. In the fall of 1882; it might have been in October, November, or December.

Q. You don't remember when?

A. I don't remember it; no, sir.

Q. It wasn't earlier than the month of October, was it?

201 A. I find a letter here written in September, where I state that I would send the account on as soon as I could get in my sub-agents' accounts—a letter to the company, September 26, speaking about that.

Q. Have you got your letter book in which you forwarded the June statement for 1882?

A. I don't know whether we were in the habit of writing letters and sending them on.

Q. Well, here is your June statement. Now, tell the jury when you made that up and forwarded it.

A. We made that up some time in July; I suppose about the 5th.

Q. You got your notice on the 17th of June?

A. Yes.

Q. Did you charge commissions on returned premiums in that June statement?

A. No, sir.

Q. You hadn't discovered your error yet?

A. No, sir.
Q. That was the reason?
A. That was the reason.
Q. There was no other reason for it; you know, then, you had received the notice to quit?
A. Yes; that was on the 17th of June.
Q. Did you write a letter when you forwarded the June statement?
A. I don't think I did. I think we had a little blank to fill in the date and sent it with the account.
Q. If you have that letter it appears in these books, don't it, if you forwarded such a letter?
A. Yes; I guess I would unless it is on the blanks.
Q. Will you look for it during the recess?
A. Yes, sir.
Q. Here is a letter of June 28. Whose handwriting is that?
A. Mine.
Q. Written on the 28th of June, 1882?
A. Yes, sir.
Q. You say you made up that June statement and forwarded it some time in the month of July?
A. It could not have been made up until after the first of July; about the 5th.
203 Q. This letter of June 28, 1882, was written during the month of June?
A. Yes, sir.

Counsel then read the letter dated the 28th of June:

"John C. Hall & Co., fire & marine insurance.

ST. LOUIS, *June 28th*, 1882.

Mess. Munrose & Mulville, gen'l agents, New York.

GENTLEMEN: Yours of 26th received & noted. We would prefer to close the Co.'s business July 1st, provided the Co. would be willing to do the right thing. We wired them on the 26th, saying if they would pay us $10,000 we would let them reinsure at once; have not heard from them. If they refuse to do this we will go on and do the largest business possible in next three months, as we are entitled to do.

We did during July, Aug., & Sept., 1881, about $27,000 net premiums, & we can do this year $35,000 or $40,000. We will also take advantage of every point we can in our contract. The English translation of the contract says 30% on gross premiums, reinsurances deducted. We have submitted this clause to several prominent ins. men (without saying anything about this case), & they say under such a contract cancellations need not be taken off. Our lawyer (who is a thorough French scholar) says the French contract is even stronger on this point, for they say in it, "On net cash"—that is to say, prem's reinsurances deducted. They can't plead they overlooked the word cancellations, for in the second article from

this one, in speaking of 10% contingent, they say, Reinsurances & cancellations deducted. This alone will amount to about $12,000.

205 Then we can claim, & justly, too, that the Co. owes us full com's on the business of the Berlin-Cologne they reinsured in Colorado & N. Mexico. We are also entitled, in all equity and justice, to full pay for taxes paid in advance, supplies in our hands & in hands of ag'ts, am't'g to several thousand dollars, & should our business for next three months be injured by the rumors of reinsurance, then they will owe us for this, too.

If the Co. refuses to settle we will make our charges and settle it by law, for we think we can win the case. As we said to you in New York, we believe the Co. intends leaving the U. S., & they will have to settle with all their gen'l ag'ts soon. The Co. may lose $20,000 or $30,000 in losses in next three months; shall be glad to see Mr. Munrose at our office, for our intercourse with him & with your firm have been of the most pleasant nature.

Yours truly, JOHN C. HALL & CO., *G. A.*"

Q. Now, then, when you wrote that letter on the 28th of June your attention had been called to your contract, hadn't it?

A. Well, I don't remember the date my attention was called to the contract.

Q. Here is your letter of the 28th of June?

A. Yes, sir.

Q. And you made up that account for June in the month of July, after you wrote this letter, didn't you?

A. The June account?

Q. Yes.

A. The June account must have been made after the first of July.

Q. You didn't charge any commissions in that account on premiums returned for cancellations, did you?

207 A. No, sir; that wasn't a final account.

Q. Mr. Hall, you said in this letter and in the one which Mr. Campbell read that you had supplies on hand for this company?

A. Yes, sir.

Q. Do you make any claim for them in this suit?

A. They come in under general damages, I think.

Q. Well, on the 22nd of July, 1882, what supplies did you have on hand?

Defendant's counsel objects to the question.

The COURT: There is no claim made for it, I understand.

Mr. CAMPBELL: I made the claim and the court ruled the evidence out.

Mr. MADILL: I will not press it.

Q. Did you find the letter inclosing your report for the month of June?

A. I never thought about looking for it. I may find it by looking in the books.

Q. When did you say you made the contract with the plaintiff; when did you sign it?

A. I guess I signed it about February, 1881.

Q. When did you begin to act under it?

A. I expect in December, 1880.

Q. You made your first report for the month of December?

A. Yes, sir.

Q. And you were acting under the contract when you made that report, from that on?

A. Yes, sir; I hadn't signed the contract because I hadn't given the bond.

Q. But you were acting under the contract; you so understood?

A. Yes, sir.

Q. Then your action for the company under this contract ran from December, 1880, down to the 27th of July, 1882?

A. Yes, sir.

209 Q. In making up your final statement, which has been shown here, you charge back to the company $8,389.08 as commissions which you claim you omitted to charge on the premiums that had been cancelled. Do you know from what source you got that amount of $8,389.08? Was it on the premiums received by you under this contract?

A. Yes, sir.

Q. How?

A. I went through the accounts and got the amounts off the books for the past, and it shows in one item what I charged.

Q. Did you intend to make up that amount on the premiums received by you while acting under this contract for the plaintiff?

A. Yes, sir.

Q. That was your purpose??

A. Yes, sir.

Q. Do you claim you did that?

A. Well, my contract had been stopped then.

Q. No; do you claim you did that?

A. I did it under the contract. The contract had ceased, and that account was not made up until afterwards.

Q. And in arriving at your item of $8,389.80, which you say you failed to charge to the company by an error, do you claim that was computed simply during the period of the contract down to the time you quit? Do you claim that?

A. I don't remember; I can't say that; but I took the business——

COUNSEL: I can't hear you.

A. I can't say whether that was from December or commenced from June or July.

Q. It didn't commence before you began under the contract, did it?

A. I don't remember about that; the amount there will show.

211 Q. I understood you to say to the court and jury you intend to claim that amount for the period of time during which you acted under this contract with the plaintiff?

Q. Not that contract but a previous contract. There was another contract before this with Chittenden and Hall.

Q. Then this account is not limited to the contract?

A. I don't know whether it is or not.

Q. Don't you give attention enough to your business to know how you arrive at this $8,389?

A. I did at that time, but it *it* is three years ago, and I can't remember now.

Q. Are you prepared to tell the court whether any portion of this $8,000 is made up of claims which you say you had against the company prior to the time you acted under this contract?

A. The other contract is the same as this contract—as the Chittenden and Hall.

The COURT: That is not the point.

WITNESS: I say I can't remember without looking at the papers.

Q. I did not know but you would remember the fact.

A. No, sir.

Q. You have no recollection on the subject?

A. I can't recollect.

Q. Is this your handwriting?

A. (Paper shown to witness.) Yes, sir.

Q. These are your figures?

A. Yes, sir.

Q. There is your $8,389 computed?

A. Yes, sir.

Q. Do you see you credit that back to premiums received as early as June, July, August, September, October, and November?

A. I see it now.

Q. Now, that was prior to your acting under this contract, wasn't it?

A. Yes; that is Chittenden & Hall's contract.

Q. Now, Chittenden and Hall sent in their business the
213 same that Hall did, didn't they?

A. Yes.

Q. Charging commissions simply on net premiums, and he omitted premiums returned on cancellations?

A. Yes, sir.

Q. You sent that back in this account and attempted to credit that also?

A. Yes; the business was mine at that time—before the contract was made.

Q. We are not asking about that. Now, do you know how much you include in this $8,389.08 account of premiums not embraced under this contract, not embraced in your monthly reports?

A. Well, do you date this contract from December?

Q. You dated it from December; you filed your first report in December, and you say you acted first in the month of December.

A. Yes; there is about $5,000.

Q. See if this isn't it, $5,321.05; isn't that it, right at the bottom?

A. $5,321.05.

Q. That is the amount from June to November, inclusive?
A. Yes, sir.
Q. And you computed your commissions on your returned premiums at the rate of 30%?
A. Yes, sir.
Q. Didn't that amount to $1,596.31?
A. Yes, sir.
Q. So that embraced in this amount of $8,389.08 is $1,596.31 on account of business done prior to the time you began to act under this contract; isn't that so?
A. Yes; under the Hall contract.
Q. We are not talking about any other.

Mr. CAMPBELL: What account are you asking about?
Mr. MADILL: The December account.
Mr. CAMPBELL: Which December?
Mr. MADILL: There is but one final account.

215 Q. Now, Mr. Hall, you had a gentleman in your office when you began under this contract who made up these accounts for several months, didn't you?
A. Yes.
Q. What was his name?
A. Walter.
Q. He was familiar with the French language?
A. He claimed to be; yes.
Q. He made out your reports in French?
A. Yes.
Q. And you paid him by the month, didn't you?
A. Yes.
Q. Did you mean to be understood this morning, in your testimony, that you didn't remit to the company from month to month the balances found in your hands after charging your commissions on net premiums, deducting first the amounts returned to the assured because of cancellation?
A. You mean the balances brought down each month?
Q. Yes, sir.
A. Sometimes might have remitted and sometimes not.
Q. As a rule, you remitted the next month?
A. If I had the funds on hand and no losses due.
Q. You can tell by looking. Your first report is the month of December?
A. Yes, sir.
Q. The balance left in your hands according to that was what?
A. $4,250.70.
Q. And the next month your balance was how much?
A. $2,127.54.
Q. And the balance for the month of December?
A. Yes, sir.
Q. Didn't you remit that balance of February and get a receipt for it?
A. Yes; and charged up with it.

Q. And that month of February did show a balance against you of how much?

A. $6,366.09.

Q. Didn't you remit that $6,366.09 the next month?

A. That shows there; yes.

217 Q. And got a receipt for it?

A. Charged trustees and receipted.

Q. Now, your balance for March is how much?

A. $4,316.58.

Q. Didn't you remit that and so state in your next account?

A. Yes; it shows there.

Q. Now, your balance, then, for the month of April was how much?

A. $4,182.58.

Q. Didn't you remit that to the trustees?

A. Yes; and brought down the balance again.

Q. The balance then was how much?

A. $3,517.83.

Q. Didn't you remit that same amount the next month—the balance of the report shown, in your hand?

A. Yes.

Q. And that left how much?

A. $3,878.58 for that month.

Q. Didn't you remit that the month following?

A. Yes, sir.

Q. And that left your balance how much?

A. $4,522.58.

Q. Didn't you remit that the very next month?

A. Yes, sir.

Q. Leaving your balance how much?

A. $5,011.05.

Q. That you had on hand for remittance?

A. Yes, sir.

Q. Didn't you remit it?

A. Yes; I guess I did.

Q. Don't you see you did?

A. Yes, sir.

Q. Leaving a balance of——

A. $5,935.45.

Q. Didn't you remit that, this $5,935.45?

A. Yes, sir.

Q. That was for October, 1881?

A. Yes, sir.

Q. That left a balance of ——

A. $5,114.48. Now, I will tell you about that: That says, Charge to trustees, New York; that might have been exchange on New York for that balance exactly. I might have paid a loss — $3,000 and sent it along with that and got a voucher for that money.

Q. Could that be so and you keep the receipt?

A. Yes, sir. If we sent it in cash or voucher it represents

219 that much and they would give me a receipt for it. I don't know how that was.

Q. You stated in your report that you submitted it to the trustees in New York.

A. Charged up in that shape.

Q. As remitted to the trustees in New York?

A. Yes; charged to the trustees.

Q. Did you state the facts in the report as they existed? When you state in these reports, "Remitted to the trustees, September 4th, $5,000," did that tell the truth?

A. That tells the truth. I either sent the money or something to represent it.

Q. Isn't it true in reference to all these reports that you did remit the money in the form you explained?

A. I remitted them; yes.

Q. There is your balance of $5,114.48 remittance to the trustees.

A. I had 6 or 8 accounts. I had to put it in this shape to make it so that I could charge it up in that way; it don't matter whether I send $1,000 of it and the balance as receipts for losses or not.

Q. You remitted it?

A. Yes; in some shape.

Q. And charged the company with it?

A. Yes, sir.

Q. Now, the $4,520.20, you remitted that in the same way?

A. Yes, sir.

Q. And that left you a balance of $5,067.15?

A. Yes, sir.

Q. And you remitted that the same way?

A. Yes, sir.

Q. Leaving a balance of $5,621.27?

A. Yes, sir.

Q. And you remitted that, did you?

A. Yes, sir.

Q. Leaving a balance of $4,939.67; you remitted that, didn't you?

A. Yes, sir.

Q. Leaving a balance of $5,474.05?

A. Yes, sir; of course; they were all charged just that way.

221 Q. You remitted that, didn't you?

A. Yes, sir.

Q. $5,474.05?

A. Yes, sir.

Q. Now comes the month of April, leaving a balance of $4,850.76?

A. Yes, sir.

Q. Did you remit that?

A. I don't know whether I did or not.

Q. Don't you know whether you did or not?

A. It shows in the final account I did not.

Q. Don't you know you did not?

A. Let me see the account and I will tell you.

Q. Have you no recollection on this subject?

A. I saw April, May, and June this morning credited up. I suppose that is it.

Q. What I wish to ask is whether you know whether you remitted the April balance of 1882 in your hands to New York.

A. Let me see the final account.

Q. Have you no way to tell except by looking at that? Have you no knowledge or recollection of that?

A. I think I carried those three balances to that final account. Perhaps this was paid out for losses, and before the month of April was through or May came around; I can't tell.

Q. Don't you see in this report you did not do it?

A. Yes, sir.

Q. You say you did not remit the May balance.

A. Yes, sir.

Q. And that you didn't remit the June balance?

A. Yes, sir; there is items on the other side; losses paid out on the other side. I had that to show cash in my hands at that time, and the balance was carried into that final account.

Q. Mr. Hall, you claim that your losses for the three months were how much? What did you put it at?

223 A. Mulville put it at $5,000.

Q. What did you put it at?

A. I wanted more.

Q. You charged it in this account, $5,000?

A. Because he placed it at that; yes

Q. Besides the $5,000 how much did you charge?

A. I charged up $8,300 there under the contract.

Q. How much did you charge besides the $5,000?

A. 8,300 and odd dollars.

Q. But that is for prior to the month of July?

A. Yes, sir.

Q. What did you charge for the month of July?

A. I entered—I made this account the same as the other.

Q. How much was that?

A. $2,733.46.

Q. For previous business you charged $8,339?

A. Yes, sir.

Q. And that made over $11,000, didn't it?

A. Yes, sir; this is on cancellations.

Q. I understand for the month of July you charged in this account and retained $2,733.46 as your commission.

A. Yes, sir.

Q. And you charged in addition to that $5,000?

A. Yes, sir.

Q. That would make $7,733.46?

A. Yes, sir; those two amounts make that.

Q. And that is what you charged for that time?

A. Yes, sir.

Q. Now, if you had that letter book could you look over it?

A. Yes; I don't think that I ever took a press copy.

Q. I would like to have you see if you recall the date and the time you wrote that June account.

A. After July.

Q. About the middle of the month?

A. I don't think as late as that. We used blanks similar to
225 that—that is, notifications of losses. I don't think there is any copy of it at all; no; there is no copy there. There is August: I know it wasn't. I don't think it was the custom to write a letter when the account went on.

Q. One further question. How many of these accounts are in your handwriting?

A. None of them.

Q. Whose is that in?

A. A young fellow named Walter.

Q. A boy in your office?

A. No, sir; a young man.

Q. How old a young man?

A. About 21.

Q. Did you teach him the business?

A. No; he was qualified before he came in the office.

Q. You gave him instructions to make up the accounts?

A. He made them up as they had been.

Q. You charged these commissions in your books?

A. Yes, sir.

Q. To yourself?

A. No; I did not have anything to do with the accounts at all.

Q. Who was the book-keeper in your office?

A. These accounts never went on the books.

Q. I understand. Who kept your books?

A. Part of the time my brother.

Q. And the balance of the time?

A. I had a young fellow from Louisiana. I don't remember his name.

Q. And the balance of the time?

A. Well, finally, the last two or three years a young man named Doll.

Q. Did you ever keep your own books?

A. No, sir; not outright.

Q. Did you assist in keeping them?

A. I made entries in them, I suppose; yes.

Q. You had access to them every day?

A. Yes, sir; if I wanted to.

227 Q. Your accounts were made up in your books? You kept account of your commissions and the books were in your office?

Mr. CAMPBELL: You mean personally?

Mr. MADILL: Under his direction.

WITNESS: Well, these accounts, you see, are not kept all alike; they are in my books.

Q. I understand, but they were in your office. The amount of premiums which you received in a given month and the amount of

commissions you took out in a given month were all entered in your books?

A. Yes, sir.

Q. And you can go to your books and give me the amount of premiums received in a given month, can't you?

A. No; I haven't got those books now.

Q. Where are they?

A. Sold for old papers.

Q. You had them?

A. Yes, sir.

Q. Could you give me, if you had them, the amount of premiums charged?

A. Yes, sir.

Q. And the balance against you in favor of the company?

A. Yes, sir.

Q. You had access to those books repeatedly?

A. Yes, sir.

Q. And you examined them repeatedly?

A. Yes, sir; tried to.

Q. When this young made up these accounts they were submitted to you?

A. Yes, sir; I guess so.

Q. You guess so; don't you know?

A. Well, yes; I suppose I looked at the account before it went out of the office.

Q. You know what was in it?

A. Yes, sir.

Redirect examination by Mr. CAMPBELL, counsel for the defendant:

Q. In your conversation with Mulville did you and he speak of the amount of taxes paid by you for the company in Missouri
229 and other States, the amount of supplies on hand, moneys expended for maps, etc.?

A. Yes, sir; the ground was pretty thoroughly gone over between us. He staid here a couple of days. I told him about what these amounts were; what I thought I ought to be paid for them. I could not go in some States to do business on the first of January and some States on the first of July. You have to pay taxes a year in advance, and I couldn't do business for that company until it was qualified in some of the States; in fact, all the States for the remainder of the year 1882.

Q. When did you buy out Chittenden?

A. I guess July or August, 1880; the fact is almost in the start I went in with him.

The COURT: The only point presented is this: In this $8,000 was included something that pertained to a former contract, to wit, $1,596; that is all of that.

Q. The account you rendered to the company shows that these charges were made, doesn't it?

A. Yes, sir.

Q. I would like to have you see if you recall the date and the time you wrote that June account.

A. After July.

Q. About the middle of the month?

A. I don't think as late as that. We used blanks similar to
225 that—that is, notifications of losses. I don't think there is any copy of it at all; no; there is no copy there. There is August: I know it wasn't. I don't think it was the custom to write a letter when the account went on.

Q. One further question. How many of these accounts are in your handwriting?

A. None of them.

Q. Whose is that in?

A. A young fellow named Valter.

Q. A boy in your office?

A. No, sir; a young man.

Q. How old a young man?

A. About 21.

Q. Did you teach him the business?

A. No; he was qualified before he came in the office.

Q. You gave him instructions to make up the accounts?

A. He made them up as they had been.

Q. You charged these commissions in your books?

A. Yes, sir.

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A. No; I did not have anything to do with the accounts at all.

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commissions you took out in a given month were all entered in your books?

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A. I guess July or August, 1880; the fact is almost in the start I went in with him.

The COURT: The only point presented is this: In this $8,000 was included something that pertained to a former contract, to wit, $1,596; that is all of that.

Q. The account you rendered to the company shows that these charges were made, doesn't it?

A. Yes, sir.

Q. The charges were made for June, July, August, September, October, and November?

A. Yes, sir; all itemized; shows the whole thing.

Q. That is, the account you rendered to the company?

A. Yes, sir.

Q. Showing the whole thing?

A. Yes; my final account put everything in there which I overlooked.

Q. Did the company know you bought out Chittenden in the summer of 1880?

A. Yes, sir.

Q. You say Chittenden's contract was exactly like yours?

A. Yes, sir.

Recross-examination (by Mr. MADILL):

Q. There is one letter I wish to identify. Is that in your handwriting? (Letter shown to witness.)

A. Yes, sir.

Q. Under the date of what?

A. October 19, 1882.

231 Q. Will you look at that? Doesn't that refer to a cable dispatch about the reports you testified you forwarded to the company?

A. Yes, sir.

Q. Were they not returned to you and never sent to the company? Just read your letter.

Witness reads as follows:

"Since writing you this morning the Western Union Telegraph Company bring letters, certificates, etc., together with our telegram to the company of July 27, desiring to pay us the cost of same. As it was never delivered to the company, we declined to take the money. They claim the cable went all right to London and the error occurred in transmitting from there to Paris. It strikes us the company can recover from the telegraph company any damage they may have sustained.

Yours truly, JOHN C. HALL & CO.

P. S.—This is the first we heard regarding this."

Q. What is the date of that?

A. October 19, 1882.

Q. Had you forgotten this morning the fact that this paper was returned to you, and that it never reached the company?

A. You didn't ask if it had reached the company. You asked if it had been returned. I don't remember now that it was returned to me unless a man came from the telegraph office and told me.

Q. You knew it had never reached the company, didn't you?

A. I heard so; yes.

(By Mr. CAMPBELL:)

Q. Do you know the amount of those policies that were reinsured?

A. No, sir; I have never been able to find out.

Q. Was that in your jurisdiction?

A. Yes, sir; they went into a State in my territory and reinsured another company, but I have never been able to get at the
233 amount of money paid this company, on which I claim a commission, and don't know what it is.

(By Mr. MADILL:)

Q. They sent you a list of all the policies?

A. They sent a list of the policies, but not the premiums.

Q. They sent you a list of the policies?

A. They sent the numbers, but not the premiums.

Q. You took care of the business afterwards?

A. I sent to our special agent in Colorado not to let our lines interfere with it.

Q. With your own special agent?

A. Yes, sir.

This was all the evidence introduced in the case. Plaintiff thereupon requested the court to charge the jury as follows:

The court instructs the jury that under the contract between plaintiff and defendant read in evidence the form of policy used by defendant was to be furnished him without charge by plaintiff, but the defendant was required to pay all the expenses of conducting the business of his agency and sub-agencies within the district designated in his said contract, to wit, Missouri, Tennessee, Arkansas, Kansas, Colorado, and New Mexico, including all expenses of advertising, correspondence, offices, salaries of employees and sub-agents, taxes of all kinds, and the expenses of the settlement of losses, excepting the costs of courts or of lawyers incurred in such settlements of losses.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

235 The jury are instructed that by the contract between plaintiff and defendant, read in evidence, the plaintiff had the right to terminate the agency of the defendant at any time by giving said defendant three months' notice in advance, and that thereupon the plaintiff had the right to require the defendant to give all his attention to the settlement of the transactions of his agency and in facilitating the turning over or transmission of his agency; and if the jury find from the evidence that the plaintiff did, on or about the 17th day of June, 1882, notify defendant of its purpose to terminate said contract at the end of three months, then, notwithstanding the plaintiff failed to file in the insurance department of Missouri the annual statement for 1882, required by the law of Missouri, and defendant, by reason of such failure, was compelled to cease doing business in said State of Missouri as agent of

plaintiff on the 27th day of July, 1882, the defendant can only claim as damages for the failure of plaintiff to file said report such sum as the jury may believe from all the evidence in the case he would have made on business to be done by him in said State of Missouri between the 27th day of July, 1882, and the 17th day of September, 1882, if said statement had been filed by plaintiff, and in arriving at such sum the jury must not include any sums which defendant could have made between the said 27th of July and 17th day of September in the States of Tennessee, Arkansas, Kansas, Colorado, and in New Mexico.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

237 The court instructs the jury that the failure of the plaintiff to file in the insurance department of Missouri the annual statement required by the law of that State for the year 1882 does not entitle the defendant to demand on that account any greater sum than a commission of 28 per cent. on such net premiums as he would have received for policies issued between the 27th day of July and the 17th day of September, 1882, after deducting from such commission the proportion of expenses of conducting the business of his agency.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

The court instructs the jury that by the contract between plaintiff and defendant, read in evidence, the defendant agreed to forward to the plaintiff each week a detailed memorandum of the policies written during the week, and also to forward to the plaintiff each month a summary memorandum of the risks underwritten during the month, and a memorandum of all risks cancelled, accompanied with the policies cancelled, and also a memorandum of the losses paid and accessory costs, with vouchers and a duplicate of the receipt, and to comply in the preparation of said weekly and monthly memoranda with the instructions of the company and the local customs; and the court also further instructs the jury that by said contract the defendant was required to prepare at the end of each month a balance-sheet and to pay over during the following month to the trustees of plaintiff in New York the balance shown by such sheet to be in his hands.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

239 The court instructs the jury that under the contract between plaintiff and defendant, read in evidence, defendant's commissions were fixed at 30 per cent. down to the 31st day of December, 1880, and at 28 per cent. thereafter, and such commissions must be ascertained as follows—that is to say: From the gross amount of the premiums received by defendant is to be deducted, first, all sums returned to parties insured because of the cancellation of their policies, and, second, all sums paid to companies reinsuring

risks on policies issued by defendant, and upon the balance thus ascertained the said commissions respectively of 30 per cent. and 28 per cent. must be computed.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

The court instructs the jury that in the monthly balance-sheets or reports furnished by the defendant to the plaintiff from and including the month of December, 1880, to and including the month of June, 1882, the defendant computed his commissions on the amount of premiums received by him, after deducting the amount of premium he had returned to persons insured whose policies he had cancelled, and also such premiums as he had paid other companies for reinsurance, and paid over to the plaintiff from and including the said month of December, 1880, to and including the said month of March, 1882, the money received by him in his agency, less his commission computed on the basis aforesaid; and the court declared the law to be that the defendant is estopped from now claiming that said commissions were erroneously or improperly computed.

Which request was by the court refused; to which ruling
241 of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

The court instructs the jury that by the balance-sheet or account of the defendant for the month of July, 1882, and forwarded to the plaintiff in December, 1882, defendant admits that the balance due from him to the company for the months of April, May, and June, and aggregating the sum of $14,195.68, had not been remitted to the plaintiff or its trustees.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

Plaintiff requested the court to charge the jury as follows:

The court instructs the jury that if they find from the evidence that the defendant believed and claimed when he prepared and forwarded to plaintiff his account for the month of June, 1882, that he was entitled to commissions on premiums received without deducting premiums returned to the assured on cancellation of policies and still made up and forwarded said account on the basis of deducting premiums returned on cancellations of policies, then the defendant cannot claim in this case the right to commission on such portion of premiums as were returned to parties assured whose policies were cancelled.

Which request was by the court refused; to which ruling of the court plaintiff duly excepted at the time.

The court thereupon charged the jury as follows:

"GENTLEMEN OF THE JURY: The matters submitted to you under the admissions of counsel involve a narrow inquiry, much narrower than would have occurred had they not agreed that a few of the items only would be submitted to your consideration.

243 "The party defendant became the agent of the party plaintiff and gave a bond in the sum of $25,000, with sureties, for

the discharge of the office he assumed by the contract. Among the items of the contract was this: That either party might terminate the same on three months' notice, in the intermediate time the parties remaining in the same condition that they were before, but at the expiration of the three months their business relations with each other should be closed.

"It seems that somewhere about the 17th of June the plaintiff informed the party defendant that his services with this agency should terminate; that from failure on the part of the plaintiff to comply with the terms of the law whereby its insurance business could be done in this State, to wit, on the 27th of July, the defendant could not proceed in the line of his business during the entire three months Now, what damages were sustained in respect thereto? It is claimed that on consultation between himself and the agent of the plaintiff it was considered that $5,000 would be a fair consideration. Of course, to go into an inquiry in minute details in respect to such a matter would involve a vast variety of considerations; but it is stated that the agent of the plaintiff said that he considered that a fair amount, and the defendant on the stand has sworn that he was prepared to say that that was a fair amount. Practically that is all the testimony we have on that subject. Therefore, in the absence of any testimony to the contrary, you may take it that $5,000 should be considered as a proper sum to be allowed this defendant for damages by him sustained through the non-conformity with the terms of the contract by the plaintiff; but behind that comes another item rendered in the account here, of the sum of $8,389.08. You heard at an early period of this trial the ar-
245 guments of counsel and the rulings of the court. It seems that this contract is different from the ordinary contracts made between corporations and their agents in regard to this class of insurance. This agent was to incur all the expenses of himself, his sub-agents, and so on, and receive up to the period named in the contract 30%, and afterwards 28%, on what?—and there is the strain of the case as to that point—net premiums. And then the contract proceeds to define what a net premium is, to wit, that out of the premiums received there is to be deducted only the premiums for reinsurance. Now, as remarked by the court at the time, looking through this very long and complicated contract, it is somewhat remarkable that cancellations appear only in one form, which has nothing to do with compensation; hence the court is bound to instruct you that the contract gave as compensation to this defendant these percentages on the premiums by him received, deducting only the reinsurances. It seems all through this line of testimony that there was an omission on his part with regard to commissions in this particular, to wit, that he made deductions for cancelled policies when his contract did not require him to do it; hence this difference, to wit, the sum of $8,389.08. Now, I am asked to instruct you in a great many forms that are presented here that, inasmuch as Mr. Hall through a period of 19 or more months rendered his accounts on the basis he was not to have the benefit of these canceled policies—I mean cancelled policies in the way of premiums—

therefore he should not be permitted now to claim the same. I think that the rendering of this account in that form does not work what in law is called an estoppel, and that he is to be permitted now, when you are finally to settle this question, to settle that matter, the court instructing you as a matter of law that
247 that deduction was not required to be made.

"Now, so far as we have testimony on the subject, the amount was $8,389.08, but it appears that he included in that 1,596.31 which ought not to have been included, because it belonged to something else. I am asked to say in one of these instructions that there would be due from this defendant unless these allowances are made, the way I figure it, $13,800.12; but of course the jury are not bound to accept my computation. Now, suppose it to be, then, under the testimony that this defendant had in his hands $13,800.12, he is bound to pay that money over unless he is entitled by way of these demands for what he claims, to wit, $5,000 damages.

"The strain of the case, as I have already stated, is on the allowance in respect to the cancelled policies. The court instructs you that the party is entitled to that allowance, but he has stated in his final account here that the amount was $8,389.08. In the course of the examination, which I suppose counsel admit, there was included in it, what properly did not belong to that account, $1,596.31, so that that amount would be $6,793.77, and, as there is only one line of testimony in regard to the $5,000, it would make what he is entitled to have deducted from the demand of plaintiff on his account as rendered $10,793.77. You may strike the balance. I have made it here, and if counsel wish I will state it. That leaves $2,600.35 due from the defendant. You are not bound to accept my figures; I only submit them to aid you."

To all that part of the charge of the court in the following words, to wit: "Among the items of the contract was this, that either party might terminate the same on three months' notice, in the intermediate time the parties remaining in the same condition that
249 they were before, but at the expiration of the three months their business relations with each other should be closed," the plaintiff duly excepted at the time.

To all that part of the charge contained in the following words, to wit: "That from failure on the part of the plaintiff to comply with the terms of the law whereby its insurance business could be done in this State, to wit, on the 27th day of July, the defendant could not proceed in the line of his business during the entire three months," the plaintiff duly excepted at the time.

To that part of the charge of the court contained in the following words, that is to say: "Now, what damages were sustained in respect thereto? It is is claimed that on consultation between himself and the agent of the plaintiff it was considered that $5,000 would be a fair consideration. Of course to go into an inquiry in minute details in respect to such a matter would involve a variety of considerations, but it is stated that the agent of the plaintiff said that he considered that a fair amount, and the defendaut on the stand ha

sworn that he was prepared to say that was a fair amount. Practically that is all the testimony we have on that subject. Therefore, in the absence of any testimony to the contrary, you may take it that $5,000 should be considered as the proper sum to be allowed this defendant for damages by him sustained through the non-conformity with the terms of the contract by the plaintiff," the plaintiff duly excepted at the time.

To that part of the charge of the court contained in the following words: "It seems that this contract is different from the ordinary contracts made between corporations and their agents in regard to this class of insurance. This agent was to incur all the expenses
of himself, his sub-agents, and so on, and received up to the
251 period named in the contract 30 per cent., and afterwards 28
per cent., on what?—and there is the strain of the case as to that point—net premiums. And then the contract proceeds to define what a net premium is, to wit, that out of the premiums received there is to be deducted only the premiums of reinsurance," the plaintiff at the time duly excepted.

And to that part of the charge of the court contained in the following words: "Now, as remarked by the court at the time, looking through this very long and complicated contract, it is somewhat remarkable that cancellations appear only in one form, which has nothing to do with compensation; hence the court is bound to instruct you that the contract gave as compensation to this defendant these percentages on the premiums by him received, deducting only the reinsurance," the plaintiff duly excepted at the time.

To that part of the charge of the court contained in the following words—that is to say: "It seems all through this line of testimony that there was an omission on his part with regard to commissions in this particular, to wit, that he made deductions for cancelled policies when his contract did not require him to do it; hence this difference, to wit, the sum of 8,389.08," the plaintiff duly excepted at the time.

To that part of the charge of the court contained in the following words, to wit: "Now, I am asked to instruct you in a great many forms that are presented here; that inasmuch as Mr. Hall, through a period of 19 or more months, rendered his accounts on the basis he was not to have the benefit of these cancelled policies—I mean cancelled policies in the way of premiums—therefore he should not be permitted now to claim the same. I think that the rendering of this
account in that form does not work what in law is called an es-
253 toppel, and that he is to be permitted now, when you are finally to settle this question, to settle that matter, the court instructing you as a matter of law that that deduction was not required to be made," the plaintiff duly excepted at the time.

And to that portion of the charge of the court contained in the following words—that is to say: "Now, suppose it to be, then, under the testimony that this defendant has in his hands $13,800.12, he is bound to pay that money over, unless he is entitled by way of these demands for what he claims, to wit, $5,000 damages," the plaintiff duly excepted at the time.

To that part of the charge of the court contained in the following words: "The strain of the case, as I have already stated, is on the allowance in respect to the cancelled policies. The court instructs you that the party is entitled to that allowance, but he has stated in his final account here that the amount was $8,389.08. In the course of the examination, which I suppose counsel admit, there was included in it what properly did not belong to that account, $1,596.31, so that that amount would be $6,793.77, and as there is only one line of testimony in regard to the $5,000 it would make what he is entitled to have deducted from the demand of plaintiff on his account as rendered $10,793.77. You may strike the balance. I made it here, and if counsel wish I will state it. That leaves $2,635.00 due from the defendant," the plaintiff duly excepted at the time.

The jury under the instructions of the court rendered a verdict for the plaintiff for the sum of only $2,007.35.

Said verdict is in words and figures following, to wit:

2247.

We, the jury, find for the plaintiff in the sum of two thousand seven dollars and thirty-five cents.

WM. F. COX, *Foreman.*

255 Thereafter and at the same term of the court, to wit, September term, 1885, the plaintiff filed its motion for a new trial in the words and figures following, to wit:

*Motion for New Trial.*

In the Circuit Court of the United States for the Eastern District of Missouri.

| | |
|---|---|
| La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, a Corporation, Plaintiff, *vs.* John C. Hall, Defendant. | September Term, 1885. |

And now comes the plaintiff in the above-entitled action and moves the court to grant a new trial in this cause, and assigns as grounds for such motion the following:

First. The court erred in admitting incompetent and illegal testimony on the trial offered by the defendant, and to the introduction of which plaintiff objected.

Second. The court erred in excluding competent and legal testimony offered on the trial by plaintiff, the introduction of which was objected to by the defendant.

Third. The court erred in giving improper and illegal instructions to the jury.

Fourth. The court erred in refusing proper and legal instructions to the jury asked by the plaintiff.

Fifth. The court erred in charging and instructing the jury in

respect of the true construction of the seventh article of the contract between the plaintiff and defendant read in evidence.

Sixth. The court erred in the construction and interpretation put in its constructions or charge to the jury on the provisions or
257 articles of the contract between plaintiff and defendant read in evidence.

Seventh. The court erred in its instructions or charge to the jury in respect of the measure of damages applicable to the plaintiff's cause of action against the defendant.

Eighth. The court erred in its instructions or charge to the jury in respect of the measure of damages applicable to the claim made by defendant for estimated commissions which he alleged he was prevented from earning because of the plaintiff's failure to file its annual report for the year 1882 with the superintendent of insurance for the State of Missouri.

Ninth. Because the court erred in its instructions and charge to the jury in respect of the legal effect of the various monthly statements rendered by defendant to the plaintiff from and including the month of December, 1880, to and including the month of June, 1882.

Tenth. Because the court erred in its instructions or charge to the jury in respect of the legal effect of the report made by defendant to plaintiff in the month of July, 1882, for the business of June, 1882.

Eleventh. Because the verdict of the jury is against the evidence and the weight of evidence in the case.

Twelfth. Because the verdict of the jury is against the law applicable to the issues in the case.

Thirteenth. Because the verdict of the jury is for a much less amount than under the evidence and law it should have been.

Fourteenth. Because the court erred in refusing to charge the jury that the defendant was estopped by his report to plaintiff for the month of June, 1882, from claiming commissions on premiums returned to parties whose policies were cancelled.

MADILL & RALSTON,
*Atty's for Plaintiff.*

259 Said motion for new trial was by the court overruled on the — day of ——, 1885; to which action of the court in overruling said motion for new trial the plaintiff duly excepted at the time.

And thereafter the plaintiff presents this its bill of exceptions and asks that the same may be signed, sealed, and made part of the record herein, which is accordingly done, during said September term, on the 4th day of January, 1886.

(Signed) SAMUEL TREAT, *Judge.*

Above bill of exceptions agreed to as correct.

(Signed) MADILL & RALSTON, *For Pl'ff.*

(Signed) GIVEN CAMPBELL,
*Att'y for Def't.*

Said bond is in words and figures following, to wit:

261 Know all men by these presents that we, La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie, a corporation, and Eugene Kelly and Geo. C. Magoun, are held and firmly bound unto John C. Hall in the full and just sum of one thousand dollars, to be paid to the said John C. Hall, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of January, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at the September term, 1885, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie, a corporation, plaintiff, and John C. Hall, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John C. Hall, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said plaintiff shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

LA CONFIANCE COMPAGNIE ANONYME
D'ASSURANCES L'INCENDIE,
By L. MONROSE, *Att'y.* [SEAL.]
EUGENE KELLY. [SEAL.]
GEO. C. MAGOUN. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

262 [Endorsed:] No. 2247. United States circuit court, eastern district of Missouri. The Confiance Compagnie Anonyme D'Assurance Contre L'Incendie *vs.* John C. Hall. Bond, $1,000.00. La Confiance Company, principal; Eugene Kelly, Geo. C. Magoun, sureties. Filed 4th day of Jan'y, 1886. —— ——, clerk.

263 UNITED STATES OF AMERICA, }
*Eastern District of Missouri,* } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, exhibits, pleadings, and proceedings had in case No. 2247, of La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie, a corporation, plaintiff, against John C. Hall, defendant, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this first day of February, in the year of our Lord, eighteen hundred and eighty-six.

A. P. SELBY,
*Clerk of said Court.*

264 [Endorsed:] No. 2247. United States circuit court, eastern district of Missouri. La Confiance Compagnie Anonyme D'Assurances Contre L'Incendie against John C. Hall. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 84. La Confiance Compagnie Anonyme D'Assurance Contre L'Incendie, plaintiff in error, *vs.* John C. Hall. Filed September 20, 1886.

Office Supreme Court, U. S.
FILED,
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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890. No. 11.

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE,

*Plaintiff in Error,*

*against*

JOHN C. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

# BRIEF FOR PLAINTIFF IN ERROR.

C. G. Burgoyne, 146–150 Centre Street, New York.

# Supreme Court of the United States.

La Confiance Compagnie Anonyme
D'Assurance Contre L'Incendie,
Plaintiff in Error,

vs.

John C. Hall,
Defendant in Error.

## BRIEF FOR PLAINTIFF IN ERROR.

### Statement of the Case.

This is a proceeding by writ of error to review a decision of the Circuit Court of the United States for the Eastern District of Missouri. The pleadings and evidence are set forth in the transcript of record filed September 20th, 1886.

The controversy is between the plaintiff in error, a fire insurance company of France (Record, p. 4), and the defendant in error, formerly its general agent, located in St. Louis, Missouri, and acting under a written contract as such agent in Missouri, Tennessee, Arkansas, Kansas, Colorado and New Mexico (Record, pp. 4, 11, 29). On commencing his duties as agent, he gave to

the company a bond conditioned, among other things, for his accounting for and paying over to the company all moneys that should be paid to him belonging to the company (Record, pp. 4, 24). The present action is brought on this bond to recover $15,000 claimed by the company to be wrongfully withheld by the agent (Record, p. 5).

The agent seeks to reduce or cancel this liability on two distinct grounds (Record, p. 39), one of which is his alleged loss of business resulting from the company's discontinuing business in Missouri (Record, pp. 11, 52), and the other of which is that he is not, according to his construction of the written contract between the parties, required to make certain deductions in estimating his compensation, but which deductions he is, according to the construction contended for by the company, required to make (Record, p. 9). Judgment was given below for the plaintiff for $2,007.35, but plaintiff claims that this sum is too small, hence this writ of error. Further details appearing in the pleadings and evidence will be set forth in connection with the different points hereafter discussed.

## Assignment of Errors.

The plaintiff in error assigns as errors the following, to wit:

1. The Court erred in excluding testimony offered to show what is meant by "net premium" in fire insurance (Record, p. 44).

2. The Court erred in admitting evidence of an offer of settlement made by an agent of the plaintiff to the defendant (Record, pp. 53, 54), and in refusing to strike such testimony from the record (Record, p. 54).

3. The Court erred in admitting in evidence the opinion of the defendant as to the amount of damage sustained by him by reason of the plaintiff discontinuing business in Missouri (Record, p. 54).

4. The Court erred in refusing to charge, as requested, that in ascertaining the commissions of the defendant, all sums returned to parties insured because of the cancellation of their polices should be deducted from the gross amount of premiums received by the defendant (Record, p. 72).

5. The Court erred in refusing to charge, as requested, that the defendant having furnished monthly statements to the plaintiff, in which he deducted the amount of premiums he had returned to parties insured because of the cancellation of their policies, in computing his commissions, he was estopped to claim that such commissions were erroneously or improperly computed (Record, p. 73).

6. The Court erred in charging that $5,000 should be considered as the proper sum to be allowed as damages for non-performance by the plaintiff (Record, p. 75).

7. The Court erred in charging that the contract defined what a net premium is, to wit, that out of the premiums received there should be deducted only the premiums of reinsurance (Record, p. 76).

8. The Court erred in charging that the rendering by the defendant of an account on the basis that he was not to have the benefit of the cancelled policies did not work an estoppel (Record, p. 76).

## POINTS.

### I.

*It was error to refuse to admit evidence of usage to show the meaning of the term "net premiums," and it was error to charge that the contract defined what a net premium is.*

By the written contract the defendant was entitled to a certain commission on "the amount of *net premiums* received—that is to say, deduction being made of the premiums paid to reinsurers" (Record, pp. 9, 31).

In fixing the amount of premiums on which commissions are to be calculated, it is claimed on behalf of the plaintiff that from such premiums are to be deducted premiums returned because of the cancellation of policies (Record, p. 17). To support this claim evidence was sought to be introduced to the effect that there is in this country a universally recognized custom by which premiums returned because of the cancellation of policies are to be deducted in determining what are "net premiums." But this evidence was rejected on the ground that "the contract explains itself and does not require any extrinsic evidence in regard thereto" (Record, p. 45). And the Court charged to the same effect (Record, p. 76).

This would seem to imply that the trial Court proceeded on the theory that an expression used in a contract must be *ambiguous* in order to render admissible parol evidence of usage to explain its meaning. But such a view is, we submit, contrary to the current of the better authorities.

In *Jones on The Construction of Commercial and Trade Contracts*, § 64, it is said: "The doctrine that a word need not be ambiguous in order to admit proof of a usage, has been disputed, but it finds

abundant support in the books." See, for instance, Walls vs. Bailey, 49 *N. Y.*, 464, 469 (1872; FOLGER, J.), where the Court says: "The meaning of words may be controlled and varied by usage; even when they are words of number, length or space, usually the most definite in language."

In Myers vs. Sarl, 30 *L. J. Queen's Bench*, 9 (1860), it was held that evidence of usage to explain the meaning of the term "weekly accounts" was admissible, without reference to the term being ambiguous or otherwise. Here HILL, J., said: "It does not depend upon the point whether the expression is, in itself, ambiguous or unambiguous; it depends upon the fact whether in reference to the subject matter of the contract the word or expression has acquired a peculiar meaning." And BLACKBURN, J., said: "It is not necessary that the phrase itself should be at all upon the face of it ambiguous."

An extreme instance of this rule is seen in Mitchell vs. Henry, *15 L. R. Chancery Division*, 181 (1880), where it was laid down that evidence was proper to show that by the custom of trade an article apparently *black* was really *white*.

In this view, evidence of usage is admissible to show the meaning of the term "net premiums," whether or not such term is to be regarded as an ambiguous one.

The rule laid down in Robinson vs. United States, 13 *Wallace*, 363 (1871; DAVIS, J.), applies here: "If a person of a particular occupation in a certain place makes an agreement, by virtue of which something is to be done in that place, and this is uniformly done in a certain way by persons of the same occupation in the same place, it is but reasonable to assume that the parties contracting about it and specifying no manner of doing it different from the ordinary one, meant that the ordinary one and no other should be followed. *Parties who contract on a subject matter concerning which known usages prevail, by implication incorporate them into their agreements, if nothing is said to the contrary.*"

So here it must be assumed that the parties incorporated into their written contract the usages by which *net premiums* were estimated, in determining the amount of an agent's commissions.

Thus in Miller vs. Insurance Co. of North America, *1 Abbott's New Cases*, 470 (*N. Y. Supreme Ct.*, 1876), where the contract between an insurance company and its agent was to pay him a commission "on all premiums of insurance effected through the agency," it was held proper to admit evidence of a custom of the trade to pay commissions only on premiums *actually collected*.

So, here, the evidence offered to show the custom to deduct premiums returned because of the cancellation of the policies should have been admitted.

True, it is further provided in the contract that a deduction should be made of premiums paid to reinsurers, but there is no inconsistency between this additional provision and the other provisions as interpreted by usage, for it may well be that, *in addition to* the deductions universally recognized by usage and impliedly provided for by the contract, the parties desired to provide for a *further* deduction not recognized by usage.

The case is clearly distinguishable from cases where the effect of admitting evidence of usage would be to make an express provision of the written contract inoperative. We submit that this portion of the contract is to be interpreted as if it read: "The agent is to be paid a commission on net premiums *as such premiums are calculated in the ordinary course of business between an agent and his company*, but with this qualification, that deduction is *also* to be made of premiums paid to to re-insurers."

In this, which we submit to be the more natural view of the contract, the evidence rejected was clearly such as should have been admitted, (see Record, pp. 59–63), and it was error to charge that the contract defined what a net premium is.

## II.

*The accounts rendered monthly, during nineteen months, by the defendant and retained by the plaintiff without objection, constituted accounts stated, conclusive upon the parties in the absence of fraud or mistake.*

The written contract between the parties provided that balance sheets should be prepared at the end of each month, and the balance shown thereby to be on hand should be paid over by the defendant during the following month (Record, p. 33). In accordance with this provision monthly balance sheets or statements were prepared and forwarded to the plaintiff for nineteen months, that is to say, from December, 1880, to June, 1882, inclusive, in all of which statements the defendant deducted premiums returned because of the cancellation of policies, from the amount of premiums on which commissions were to be calculated (Record, pp. 58, 73). There is no evidence that the plaintiff ever made any objection to this form of statement; indeed, all the presumptions are quite to the contrary. Furthermore, the balances were paid over each month up to and including March, 1882 (Record, pp. 58–64).

It is difficult to see how these monthly statements did not constitute an account stated within the rule as laid down in numerous authorities. Thus it is said in Toland vs. Sprague, 12 *Peters*, 300, 335 (1838; BARBOUR, J.): "The mere rendering an account does not make it a stated one, but if the other party receives the account, admits the correctness of the items, claims the balance or offers to pay it, as it may be in his favor or as against him, then it becomes a stated account." This rule has been frequently reaffirmed by the Supreme Court.

> Standard Oil Co. vs. Van Etten, 107 *U. S.*, 325, 334 (1882; MATTHEWS, J.), and cases there cited.

See also

Wiggins vs. Burkham, 10 *Wallace*, 129 (1870; SWAYNE, J.); S. C. 19 *U. S. Supreme Court Reports, Lawyers' Ed.*, 884, with note, which see.

Lockwood vs. Thorne, 11 *N. Y.*, 170, 173 (1854; PARKER, J.), and cases there cited.

In Manchester Paper Co. vs. Moore, 104 *N. Y.*, 680 (1887, FINCH, J.), the Court says of a case where the seller of goods rendered accounts monthly: "The accounts rendered *monthly* during four years to the plaintiff, *and after examination retained without objection*, constituted accounts stated, and could only be opened and investigated upon proof of fraud or mistake."

It must then be regarded as established that in the present case the monthly statements forwarded to the plaintiff during nineteen months and retained by it without objection constitute *accounts stated*, the correctness of which the defendant is now precluded from disputing, save for fraud or mistake. There is no evidence whatever of fraud on the part of the plaintiff. It remains to consider whether there is any proof of *mistake* sufficient to enable the defendant to dispute the correctness of these accounts.

## III.

*There is no evidence of fraud or mistake sufficient to enable the defendant to dispute the correctness of the accounts stated, and to claim that the deduction therein made of premiums returned, because of the cancellation of the policies, should not be allowed.*

According to the construction of the written contract contended for above, the deductions made by the de-

fendant in his monthly statements were made in strict accordance with the contract.

But it is not material to the plaintiff's case that that construction should be assented to by the Court. If we assume that the contract does *not* provide for the deduction of premiums returned because of the cancellation of policies, the result is simply to place the defendant on the other horn of a dilemma. In other words, on the assumption we have just made, he put a wrong interpretation upon the contract; he was *mistaken* as to his rights and liabilities under the contract; he made a *mistake of law* (Record, pp. 49, 58, 59, 60). Now, having in these statements of account entered into new obligations under this mistake as to his legal liability, he seeks to be released from such new obligations on the ground of such *mistake of law*.

It has been the generally accepted doctrine both in law and equity that no relief will be granted against a *mistake of law*. There are, however, numerous authorities in various jurisdictions to the effect that under certain conditions relief will be granted against a *mistake of law*. It is, however, unnecessary to attempt to harmonize the authorities generally on this point, the law on which has been so explicitly laid down by the Supreme Court of the United States. To employ the language of the Court in Allen vs. Galloway, 30 *Federal Reporter*, 466 (*Circuit Court, W. D. Tenn.*, 1887; HAMMOND, J.): *Whatever rule may prevail elsewhere, there can be, in the equity courts of the United States, no relief from a mistake of law.*" In support of this statement, seven decisions of the Supreme Court are cited, some of which we will now consider.

The well-known case of Hunt vs. Rousmanier, 8 *Wheaton*, 174 (1823; MARSHALL, C. J.), has sometimes been cited as an authority for the position that equity will grant relief against a mistake of law merely. There were, however, no facts in that case that called for a decision of the question, as clearly appears from a later

decision in the same case in 1 *Peters*, 1, 15 (1828; WASHINGTON, J).

But whatever doubt may have been cast by the decisions in Hunt vs. Rousmanier upon the doctrine that relief will not be granted against a mistake of law merely, has been removed by later decisions of the Supreme Court. In Bank of the United States vs. Daniel, 12 *Peters*, 32, 55 (1838; CATRON, J.), it is laid down: "Mere mistakes of law are not remediable; whatever exceptions there may be to the rule, they will be found few in number and to have something peculiar in their character, and to involve other elements of decision."

And again (p. 56): "A mistake or ignorance of the law forms no ground of relief from contracts fairly entered into with a full knowledge of the facts, and under circumstances repelling all presumptions of fraud, imposition or undue advantage having been taken of the party."

Again, in Snell vs. Insurance Co., 98 *U. S.*, 85, 92 (1878; HARLAN, J.), the Court reasserts "the general and salutary rule that a mere mistake of law, stripped of all other circumstances, constitutes no ground for the reformation of written contracts."

So in 2 *Pomeroy's Equity Jurisprudence*, § 843, it is said: "The rule is well settled that *a simple mistake by a party as to the legal effect of an agreement which he executes* or as to the legal result of an act which he performs *is no ground for either defensive or affirmative relief.*"

In the present case there are no allegations or proof of any fraud, imposition or undue advantage such as might bring the case within the exceptions indicated. It is simply a case of a person entering into an obligation to pay money under the mistaken supposition that there rests upon him a liability to pay it.

The case of Bank of the United States vs. Daniel, cited above, was, like this, a case where persons en-

tered into an obligation to pay money under the mistaken supposition that there rested upon them a liability to pay it, and it was explicitly held that such mistake furnished no ground whatever for exemption from their liability on such obligation. The essential facts in that case are as follows :

Certain persons executed a note for $8,000 on account of their liability on a bill of exchange that had been protested. This amount included not merely the amount unpaid on the bill itself, but also ten per cent. damages, which claim for damages the makers of the note supposed themselves to be under a statutory liability to pay. It being afterward discovered that no such statutory liability existed, those liable on the note sought to obtain an injunction *pro tanto* against the collection of a judgment at law that had been obtained on the note. Such relief was denied on the grounds previously indicated.

Still more in point, if possible, is Powell vs. Smith, decided by the Master of the Rolls, Lord ROMILLY, and reported in *Law Reports, 14 Equity Cases, 85* (1872). There plaintiff sought to enforce an agreement to give a lease. Defendant set up that he misunderstood the effect of the agreement he had entered into, supposing that by it he obtained certain rights that as a matter of fact he did not. But this defense was overruled, the Court saying :

" I am of opinion that this is not properly a case of mistake at all. In those cases in which agreements have been set aside on the ground of mistake, there has been a mistake as to the agreement which has been entered into. That is not the case here, for the words of the agreement are not disputed on either side. All the cases which have been cited during the argument are cases where there was either a dispute and doubt as to the thing sold or where the words of the agreement expressed certain things in an ambiguous manner which might be misunderstood by the parties.

In all those cases the Court has held that it must look at the evidence, and that if the mistake is sufficiently proved the Court will then set aside the agreement. But here the words of the agreement are quite certain, *and the only thing that was not understood was the legal effect of certain words which it contained. Now, that is no ground of mistake at all.*"

This case is squarely in point on the proposition that a party to a contract can obtain no relief on the basis of his having mistaken the legal effect of any of its provisions.

See this rule applied in Rector vs. Collins, 46 *Ark.*, 167, 178 (1885; BATTLE, J.) following Bank of U. S. vs. Daniel.

And it was expressly held in Commissioners of Scioto vs. Gherky, *Wright*, 493 (*Supreme Court of Ohio*, 1834), that a mistake of law merely furnishes no ground for disputing a stated account.

## IV.

*The defendant is barred by his laches and negligence from disputing the correctness of such accounts.*

But, apart from the question of mistake, there is no equity in the claim of the defendant to be now allowed for these items for which he has failed to credit himself in the monthly statements. It appears from his own testimony that he had had long experience in the insurance business, and was familiar with the methods of doing such business, including the method of paying commissions to general agents (pp. 57-58); that he was perfectly aware during the whole period of nineteen months that in determining the amount of his commissions the premiums returned on account of cancellation were being deducted from the gross premiums. Under these circumstances the burden of proof is

clearly on him to show an excuse for his failure to sooner discover his mistake, if mistake there was. But there is nothing whatever in the evidence tending to show an excuse for such failure. And if authority is needed, the following authority is directly in point.

In Cannon vs. Sanford, 20 *Mo. App.*, 590, 594 (1886, THOMPSON, J.), an agent who rendered an account to his principal running through several years, admitting a balance due the principal, was held estopped by his laches and negligence from setting up as a defense mistakes made by him in favor of the principal. There the agent sought to obtain an allowance for interest with which he had omitted to credit himself in the various statements that he had rendered during nine years. The Court says: "It seems too plain for discussion that this is an afterthought of an agent who has used in his own business the moneys of his principal, and who having all the facts in his own breast, has rendered a final account and found himself unable to pay a small amount. * * * He could have taken credit at the proper time, and having failed to do this, and *having offered no excuse for such failure*, it must be ascribed to his own negligence. For a court of equity to allow him to wait until after the plaintiff has been put to the delay, vexation and expense of having to bring suit to collect a balance *admitted to be due* by him to her as her agent would not be equity, but it would be against conscience."

And whatever may be said of the accounts rendered for the months preceding June, 1882, the defendant was guilty of gross negligence as to the account for that month, assuming his construction of the contract to be correct. For it appears that as early as June 28 he stated as his conclusion that he was not obliged under the contract to make deduction for premiums returned on cancellation of policies; yet he thereafter made up and forwarded his account for the month, in which he did make such deduction (Record, pp. 60, 73).

## V.

*In determining the amount of damage resulting to the defendant from the plaintiff discontinuing business in Missouri, it was error to admit in evidence an offer on the part of the plaintiff to compromise for a certain sum.*

We have seen that one ground on which the defendant seeks to reduce or cancel his liability is his alleged loss of business resulting from the plaintiff discontinuing business in Missouri (Record, p. 11). It was provided by the written contract that the right of the plaintiff to put an end to the authority of the defendant was conditioned on its giving the defendant at least three months notice (Record, pp. 10, 33). Such notice was given June 17, 1882, and the authority of the defendant therefore continued until September 17, 1882 (Record, pp. 17, 47, 59). From the failure of the plaintiff, however, to comply with the terms of the statutes of Missouri, it lost the right to transact business in that State after July 27, 1882 (Record, pp. 10, 52, 53), and the defendant now claims as damages the loss of business that, as he claims, might have been transacted in Missouri between July 27 and September 17 (Record, p. 11).

The only evidence to sustain such claim for damages consists of two items. One is an alleged offer on the part of the plaintiff to compromise such claim for a certain sum. The other is the opinion of the defendant as to the amount of such damage. The latter item will be considered elsewhere.

The alleged offer to compromise is described in the defendant's own testimony as follows:

"Mr. Mulville came here and said he was authorized by the company to settle with me. The company recognized they owed me something, and he came out to settle it up, and he fixed the price himself. I didn't

name any figure. He said he would fix the price himself at $5,000. If I was willing to take that and waive everything else he was willing to close it up. I refused to accept it, and offered to arbitrate, which he would not do. He said he didn't recognize any other claim I had against the company except the three months' business, and he would pay that $5,000 for three months and wouldn't recognize anything else; if I would accept $5,000 he would close it up" (Record, p. 54). This testimony the Court refused to strike from the record. The defendant, however, testifies as to this offer that "he wouldn't take it, and he made *another proposition* to arbitrate, and he (Mulville) agreed to it." It does not appear, however, that such arbitration was ever carried into effect (Record, p. 54).

It will be observed that there is nothing in this testimony to show that the plaintiff, through Mulville, admitted that $5,000 was due. At the most the admission was that *something* was due—it might have been ten dollars or ten cents. But without *admitting anything* as to the amount of what was due, the plaintiff *offered to pay* $5,000 to avoid further trouble with its agent. The evidence of this offer was clearly inadmissible on the question of damages, or indeed on any other question. Thus, it is said in 1 *Phillips on Evidence*, 5 Am. Ed., p. 427, note 124: "The rule as established by all the cases with one exception is, not that an *admission* made during or in consequence of a treaty of compromise is inadmissible against the party, but that an *offer to do* something by way of compromise, as *to pay sums of money*, allow certain prices, deliver certain property or make certain deductions, and the like, shall be excluded. These cannot be called admissions, which can only be predicated of existing facts, but are unaccepted *propositions to do*. They lie in feasance, and rather negative the present existence of what they offer. They might be used, perhaps, as implied admissions were not this effect

taken away by the circumstance that they are plainly brought forward with a view to compromise, and then in favor of peace and against litigation, they are privileged."

It has been laid down by some authorities that the evidence of such offer is inadmissible unless expressly stated to be *without prejudice*, but this view has not been adopted by the Supreme Court of the United States. In West vs. Smith, 101 *U. S.*, 263, 273 (1879; CLIFFORD, J.), the Court cites the above note to *Phillips on Evidence* as authority, saying:

"Offers of compromise to pay a sum of money by the way of compromise, as a general rule, are not admissible against the party making the offer; by all or nearly all the cases the rule as established is, not that an admission made during or in consequence of an effort to compromise is inadmissible, but that an offer to do something by the way of compromise, as to pay sums of money, allow certain prices, deliver certain property, or make certain deductions and the like, shall be excluded. These cannot be called admissions, as they were made to avoid controversy and to save the expenses of vexatious litigation. Decided cases may be found where it is said that the evidence is admissible, unless the offer made was stated to be without prejudice; but the rule in general, both in England and the United States is, that the offer will be presumed to have been made without prejudice if it was plainly an offer of compromise." And see other authorities cited in the opinion of the Court.

Even if it be conceded that some of the statements made by Mulville on the occasion of the offer of compromise would, considered by themselves, have been admissible in evidence, yet, taken in their *connection*, none of his statements testified to as made on that occasion were admissible. For, as was said in Louis-

ville, New Albany, etc., Railway Co. vs. Wright, 115 *Ind.*, 378, 391 (1888: ZOLLARS, J.):

"An admission of a fact, *not made simply because it is a fact, but expressly or clearly for the sake of and as a part of an attempted compromise*, is not competent evidence in a subsequent action against the party making it." The same principle was recognized in Home Insurance Co. vs. Baltimore Warehouse Co., 93 *U. S.*, 527, 548 (1876; STRONG, J.), where it was held proper to refuse to receive in evidence any portion of a certain letter, the Court saying: "The letter was an offer of compromise and as such, upon well-recognized principles, it was inadmissible. *And it contains no statement which can be separated from the offer and convey the idea which was in the writer's mind.*" The same doctrine has frequently been laid down.

White vs. Old Dominion Steamship Co., 102 *N. Y.*, 660 (1886; RUGER, C. J.).
2 *Wharton on Evidence*, § 1090, 3d Ed., where see numerous authorities cited.

It seems thus clear that, for whatever other purpose evidence of this offer to pay was or was not admissible, it was inadmissible as bearing on the question of the *measure of damages* which was the question as bearing upon which it was admitted. For, conceding that it was admissible to show that *something* was due, it was clearly inadmissible as showing *how much* was due.

In short, the law on this point may be stated in the language of the Court in Insurance Co. vs. Weides, 14 *Wallace*, 375, 381 (1871; STRONG, J.): "*A compromise proposed or accepted is not evidence of an admission of the amount of the debt.*"

## VI.

*In determining the amount of damage resulting to the defendant from the plaintiff discontinuing business in Missouri, it was error to admit in evidence the opinion of the defendant as to the amount of damages he had sustained.*

We have seen that the evidence to sustain this claim for damages consists of two items of evidence. One such item we have just seen to have been improperly admitted. If, now, the other was also improperly admitted, the claim for damage resulting from the discontinuance of business is unsupported by any evidence whatever.

The second item, is, as we have seen, the opinion of the defendant as to the amount of damage. He testifies as follows: "I *don't think* there is any question but I could have made $5,000" (*i. e.*, from July 27 to September 17). And again, "for fulfilling the contract I could easily have made $5,000" (pp. 54, 55).

This was clearly a mere expression of opinion unsupported by any data. This evidence was, on well-settled principles, improperly admitted. Thus in *2 Sedgwick on the Measure of Damages*, 7 Ed., p. 589, it is said: "The general rule which requires a witness to speak to facts within his knowledge is applied to the subject of compensation; the damage must be proved like any other fact in the cause, and no testimony amounting to mere opinion is competent."

If an authority illustrative of so plain a proposition is needed, such an authority is Birney vs. Wabash, St. Louis, &c. Railway Co., 20 *Mo. App.*, 470 (1886), which was an action for breach of contract to ship certain live stock. The judgment for the plaintiff was reversed solely on the ground of the insufficiency of the proof of damages. The only evidence on this point was the plaintiff's testimony, as follows: "*I think* if I had been

allowed to ship the stock I could have made $50 more than I sold the stock for. I *calculate* I could have made at least $25 on the hogs by shipping them." The Court says: "We do not consider this as sufficient proof of damages. It is no proof at all under the legal rules governing in such cases." The following authorities are much in point:

Wakeman vs. Wheeler & Wilson Co., 101 *N. Y.*, 205, 217 (1886; EARL, J.).

Reed vs. McConnell, 101 *N. Y.*, 270, 274 (EARL, J.).

See also

Dushane vs. Benedict, 120 *U. S.*, 630, 647 (1886; GRAY, J.).

## VII.

*The error in admitting such opinion in evidence was not cured by the admission of other testimony or by the Judge's charge.*

It may be urged that although this evidence was improperly admitted, or was insufficient, yet there was other evidence in the case that was sufficient to justify the finding of the jury.

The answer to this contention is that, by the Judge's charge the jury were precluded from considering such other evidence. On this point it was charged under objection: "It is stated that the agent of the plaintiff said that he considered that (*i. e.*, $5,000) a fair amount, and the defendant on the stand has sworn that he was prepared to say that that was a fair amount. *Practically that is all the testimony we have on that subject.* Therefore, in the absence of any testimony to the contrary, you may take it that $5,000 should be considered

as a proper sum to be allowed for damages sustained through the non-conformity with the terms of the contract by the plaintiff (Record, pp. 74, 75).

What *might have been* the finding of the jury had they been instructed to consider other testimony than that which the Court assured them was "all the testimony on the subject" cannot now be said. It suffices to say that none of the testimony that they were instructed to consider as bearing on this subject was properly admitted. Assuming that there was in the case other evidence that *might* have enabled the jury to properly find as they did, the fact remains that the charge was so framed as to exclude such other exidence from the jury. And this is error, calling for a reversal of the judgment. It is said in 2 *Thompson on Trials*, § 2328: "The error of singling out isolated facts, not in themselves decisive of the merits of the controversy, and instructing the jury that if they believe such facts they will find for one party or the other, is not regarded as non-direction, but as misdirection and an invasion of the province of the jury. It is a frequent and pernicious error for which judgments are constantly reversed. For this reason, when a Judge is asked to give a charge which is so framed as to exclude from the jury any portion of the evidence which might exert an influence on their verdict, it may properly be refused."

The rule that it is error, calling for reversal, to so charge the jury as to exclude from their consideration any portion of the evidence that might exert an influence on their verdict, was applied in Ranney vs. Barlow, 112 *U. S.*, 207, 215 (1884; Woods, J.). See also authorities there cited.

## VIII.

*For the reasons assigned the judgment of the Circuit Court should be reversed.*

JOHN J. MCCOOK,
Attorney for Plaintiff in Error.

C. B. ALEXANDER,
Of Counsel.

IN THE

# Supreme Court of the United States.

**OCTOBER TERM, 1890.**

*No. 11.*

LA CONFIANCE COMPAGNIE ANONYME D'ASSURANCE CONTRE L'INCENDIE, PLAINTIFF IN ERROR,

*vs.*

JOHN C. HALL, DEFENDANT.

## Statement and Brief for Defendant.

GIVEN CAMPBELL,
*Attorney for Defendant.*

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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JOHN C. HALL, DEFENDANT.

## Statement and Brief for Defendant.

Plaintiff brought suit on the 17th of May, 1883, against defendant upon his bond, as general agent for plaintiff, alleging a failure on defendant's part to account for or pay over to plaintiff the sum of $15,000, money of plaintiff received by defendant as such agent. Defendant denied a breach of the condition of the bond or that he had failed to account for and pay over to plaintiff any sum; and, for further answer, he alleged his appointment as agent of the plaintiff under a written contract filed with his answer, marked Exhibit A; that under that contract he was appointed as general agent of the company for Missouri and several other States; that by the terms of the contract he was to receive thirty per cent. up to December 31st, 1881,

and twenty-eight per cent. for the years following upon the amount of premiums collected upon the business of plaintiff in said States and Territory, deduction being made for premiums paid by plaintiff for reinsuring its risks, and also ten per cent. of the net profits of his agency for each year, as provided in article 9 of said contract; that under the provisions of this contract he executed the bond in question; that under the terms of the contract he rendered to plaintiff monthly statements of his transactions as agent, but in all such statements, by error and omission, he failed to charge plaintiff commissions on the amount of premiums collected; that he, by error and omission, deducted from the amount of premiums collected the amounts of premiums returned upon cancelled policies, which, under the terms of said contract, he was entitled to embrace in the amount of premium upon which his commissions were chargeable; that in his account of December 8th, 1882—which was his final account—he charged up the commissions on these premiums on cancelled policies, amounting to the sum of $8,389.08, and in the same account he charged up to plaintiff the further sum of $5,000, being the amount of commissions under his contract estimated for the three months July, August, and September, these being the three months after the breach of the contract by plaintiff in ceasing to do business in the State of Missouri without having given him three months' previous notice of their intention, as required by the contract; that on said December 8th, 1882, he made out a final account embracing these charges, which showed a balance due to the plaintiff of $2,000.14, and on said day he remitted to plaintiff said sum, it being the full amount due by him to plaintiff. He also

set up, as a counterclaim, a claim for damages growing out of the wrongful and malicious breach of its contract by plaintiff, amounting to the sum of $25,000.

The reply of plaintiff (Rec., pp. 13 to 21) is very voluminous, but, in substance, admits the appointment of defendant by plaintiff, December 17, 1880; the execution and delivery of the contract "A," attached to defendant's answer; denies that defendant was to receive the compensation alleged in his answer; denies that by error or omission defendant failed to charge a commission on premiums on cancelled pollicies; denies that under the contract he was entitled to receive such commission; says that the charge of $8,389.08 for commissions on premiums on cancelled policies and the claim for $5,000 for estimated premiums during the three months he was entitled to have notice of the company's intention to cease doing business in Missouri, were false and fraudulent; admits the rendition of the account of December 8, 1882, and the payment of the $2,000.14. And in its answer to the counter-claim denies specifically nearly all the allegations of defendant's counter-claim; alleges its right to terminate the contract by giving three months' notice; says that it did so by a letter of the second of June, 1882, and says that defendant continued business and collected commissions to the 27th of July, 1882, and that he was not entitled to commissions after September 17, 1882; that under the terms of the contract the defendant was bound to render monthly statements to the plaintiff and to remit balances to the trustees of plaintiff in New York; that defendant did render such statements from and including December, 1880, to and including June, 1882, and that in each he credited himself only with commissions on net premiums received

by him and did not charge a commission on any premiums received on cancelled policies, and that this transaction operated as an account stated, and that thereby the claim of defendant is excluded.

For further replication, plaintiff alleges that these transactions between the parties constituted a practical construction of the contract, and that the defendant is thereby estopped from making claim for commissions on premiums on cancelled policies; denies the counter-claim of defendant for $25,000 damages, and alleges that under his contract defendant was bound to give notice of all facts and events relating to his agency; that he failed to notify plaintiff in time so that it could comply with the insurance laws of the State of Missouri; it further alleges that plaintiff by accident or mistake of its officers and without any intention to injure defendant or put an end to its contract, failed to send its statement to the superintendent of the insurance department of the State of Missouri before July 1, 1882; that defendant knew of this failure and negligently failed to notify plaintiff of its failure, that had he done so the statement could have been made before July 27; that by reason of this negligence plaintiff was excluded from doing business in Missouri; therefore defendant has no claim for damages, and it asks for judgment as in the original petition demanded.

## Statement of Facts and Abstract of Evidence.

John C. Hall, the defendant in this case, was a member of the firm of Chittenden & Hall, who had been general agents of the plaintiff, and Hall bought out Chittenden for the sum of $6,000, and on the 17th of December, 1880, was appointed

the general agent of the plaintiff for the States of Missouri, Tennessee, Arkansas, Kansas, Colorado, and the Territory of New Mexico, under a contract written in the French language drawn by the plaintiff and marked as "Exhibit A" attached to the answer of defendant; which contract is found in the Record, page 25, and an English translation thereof (Rec., page 29). At the same time defendant executed the bond sued upon (Rec., p. 24) defendant was ignorant of the French language and the company never explained or caused the contract to be explained to him. Defendant continued the business of his agency with the plaintiff from that time, December 17, 1880, up to the 27th of July, 1882, when the company was, by order of the superintendent of insurance of the State of Missouri, excluded from doing business in said State. This exclusion operated to destroy the defendant's business in the other States and Territory. By the terms of this contract, article 6, defendant was required to incur unusual expenses and bear unusual burdens, much larger than those required of general agents by American companies. Defendant, not understanding the French language nor the terms of article 7 of the contract, in making his statements and remittances to plaintiff charged a commission upon the premiums received, making a deduction of premiums paid to reinsurers and also a deduction of premiums upon cancelled policies. He did this in ignorance of the terms of the contract or of his rights thereunder. This continued up to the statement made in June, 1882. On or about the 17th of June, 1882, defendant received a letter from the plaintiff, dated Paris, June 2, 1882 (Rec., p. 47), informing him that in conformity with article 14 of the contract he would be relieved from his functions of general agent within three

months after the receipt of this letter, and informing him further that Messrs. Mulrose and Mulville (their New York agents) would take charge of the reinsurance of what he had in his portfolio, and asking him to give them all information that they might ask him and have an understanding with them to stop business as soon as possible—that is to say, even before the three months as defined by the contract. This letter, according to the testimony, was received about the 17th of June, 1882. Prior to the receipt of this letter, on the 24th of May, 1882, the defendant mailed to plaintiff the necessary blanks for complying with the insurance laws of Missouri, Kansas, Texas, and Arkansas and Tennessee (Rec., p. 46). No attention was paid to this last letter of the 24th of May, enclosing these blanks, and on the 17th of July, 1882, defendant addressed a letter to the plaintiff (Rec., p. 51), in which he represented to them that he had paid $6,000 for this general agency to Mr. Chittenden; that he had spent many thousand dollars in supplies and taxes; that he had been badly treated and insisted on being reimbursed, and offering to give up the agency for $10,000, saying that it would require that sum of money to reimburse him for his actual outlay, to say nothing of two years lost time. On the 27th of July, 1882, for failure on the part of plaintiff to comply with the insurance laws of the State of Missouri, the superintendent of insurance of Missouri, by letter bearing the same date (27th of July, 1882), notified plaintiff through defendant, as its general agent, that the company was no longer authorized to do business in this State, and that the transacting of business in the State of Missouri for said company, by defendant or any other person, would be a violation of law. Subsequently to this, Mr.

Mulville, of the firm of Mulrose and Mulville, came out to St. Louis, representing that he was authorized to settle with defendant, and fixed the amount of plaintiff's loss by reason of the company's failure to comply with the laws of Missouri and to give defendant the full three months' notice, at the sum of $50,00. At that time Mr. Mulville acknowledged plaintiff would have received $5,000 during the unexpired three months if the company had continued in business (Rec., p. 54). Plaintiff testified that he could have easily made $5,000 during the balance of the three months after the notice was given if the company had continued business, and that he agreed to accept the offer of $5,000 made by Mr. Mulville for that part of his contract (Rec., p. 55). About this time defendant consulted counsel and submitted his contract, and it was then explained to him that he was entitled to commissions upon cancellations Thereupon he made out his final account, in which he charged up commissions on cancellations, $8,389.08, which by error and mistake he had previously omitted in his statements, and in the same account he put in a claim for $5,000 damages incurred by breach of contract during the three months mentioned. This account showed a balance of $2,000.14, which was remitted to the plaintiff by defendant. During the cross-examination of defendant it appeared that through error he had embraced in his charge $8,389.08, the charge of commissions on cancellations in the account for the months of June, July, August, September, October, and November, 1879, and that these amounts fell within the period covered by the contract of Chittenden and Hall, and were not set up in the answer of defendant. The amount of premiums on these cancellations during those months was

$5,321.05, and commissions on same, at thirty per cent., amounted to $1,596.31, which had to be deducted from the $8,389.08, leaving $6,792.77 as the correct amount to be charged by defendant to plaintiff as commissions upon premiums on cancelled policies.

It was admitted, in open court, by counsel for plaintiff that the only dispute in the final account rendered by the defendant to the plaintiff appertained to those two items, viz., the $5,000 for commissions which would have been earned during the balance of the three months, and for the $8,389.08, being commissions on premiums on cancelled policies (Rec., p. 44).

The only testimony offered by the plaintiff was the bond, the contract and its translation, the exhibits contained in the Record, between pages 34 and 43, inclusive; the testimony of Charles Christensen (Rec., p. 45), who was offered for the purpose of proving the meaning of the term "net premiums" in fire insurance, as explanatory of those words used in article 7 of the contract (and which testimony was excluded by the court), and the letter from defendant to Mulrose and Mulville, dated June 28, 1882 (Rec., p. 60).

The only testimony offered by defendant was the testimony of Emile Karst (Rec., p. 45), who was offered to explain the meaning of certain French terms in the contract; and the letter from defendant to plaintiff of the 24th of May, 1882 (Rec., p. 46); the letter from plaintiff to defendant of June 16, 1882 (Rec., p. 46); the letter of June 2, 1882, from plaintiff to defendant (Rec., p. 47); the letter from defendant to plaintiff, July 17, 1882 (Rec., p. 51); the letter from the superintendent of the insurance department of the State of Missouri to defendant as agent of the plain-

tiff, dated July 27, 1882 (Rec., p. 52); and the testimony of defendant himself, commencing Rec. p. 47 and continuing to p. 71. The defendant testified that he could not read the French language, and that the company never explained the meaning of the contract to him; that the statements offered in evidence were made out in ignorance of and under a mistake as to his rights under the contract; that there never was any statement sent which closed up the account between him and the company until the final account of 1882 (Rec., p. 49); that this account was a correct account and was intended to correct all prior mistakes (Rec., p. 50); that other companies he represented did not require him to pay all expenses; that he was not aware of his rights when he rendered the account in June, 1882; that upon receipt of the letter from the superintendent of insurance revoking the right of the company to do business in Missouri he cabled plaintiff at once that this revocation had the effect of stopping his business in all his territory (Rec., p. 53); that one of the firm of Mulrose and Mulville came to St. Louis and agreed that his claim for loss for three months' business was equal to $5,000 (Rec., p. 54); that he himself estimated that the loss was at least $5,000; that he agreed with Mulville and Mulrose to accept $5,000 for that part of his loss (Rec., p. 55); that at the time he sent his June statement he was aware of his right, but as that was not a final account he did not undertake to make the correction until he rendered his final account showing all his claims against the company (Rec., p. 61). He explained (Rec., pp. 63, 64) how, by error, he had charged in his final account a commission on premiums received upon cancelled policies during the period covered by the contract of Chittenden and Hall.

## BRIEF.

### I.

There was no error in excluding the evidence offered by plaintiff to prove the meaning of the words "net profits" as used in article 7 of the contract. (Rec., p. 45.)

The court held that "the contract explains itself and does not require any extrinsic evidence in regard thereto."

The language of the article 7 is: "To cover said expenses and by way of remuneration for their care, Messrs. John C. Hall & Co. shall receive annually, first, a commission of 30 per cent. until 31st of December, 1881, and 28 per cent. for the following years of the amount of net premiums received—that is to say, deduction being made of the premiums paid to reinsurers." The French phrase "*c'est a dire*" is the language of explanation and points out expressly the meaning of "*des primes nettes*" (net premiums). That this was meant will be made more clear, if possible, by a consideration of the extraordinary character of the burdens imposed on the agents by article 6, by the language of articles 8 and 9, and by the article 17 the "French text" is made the basis of the contract. There is a unity in this contract which shows that the premiums of 30 and 28 per cent. for the general agent were to be based upon the whole premiums received, deduction only to be made for premiums paid reinsurers.

The evidence of usage as to the meaning of the phrase "net premiums" in the contract was properly excluded, for its effect would have been to contradict the plain language of the instrument.

Barnard *vs.* Kellogg (10 Wallace, 383–390).

Partridge *vs.* The Insurance Company (15 Wallace, 573–579).

Grace *vs.* American Central Insurance Co. (109 United States, 278–283).

II.

The court committed no error in admitting evidence of the acknowledgement between Mulville and defendant as to his loss of premiums, being $5,000 by reason of the termination of his agency within his three months' notice, (Rec., p. 55.)

Mulrose and Mullville were the general agents of plaintiff in New York, and were specially delegated by plaintiff to take charge of the affairs of settling with defendant, in the language of article fourteen of the contract. He (Mulville) was "the representative accredited for this purpose."

The letter of plaintiff to defendant of June 2, 1882 (Rec., p. 47), specially appointed Mulrose and Mulville and referred defendant to them to have an understanding with them in accordance with article fourteen of said contract. This being so, and the plaintiff being a corporation, and these the delegated agents for the specific purpose of having an understanding, his acknowledgment in this matter was binding upon his principal; besides defendant testified, and there was no evidence to the contrary, that his loss of premiums, in addition to what he had charged, was $5,000 (Rec., p. 55.)

III.

The court did not err in refusing to instruct the jury that the rendition by defendant of his monthly statements for nineteen months estopped him from claiming his rights under his contract when he rendered his final account.

There is no element of estoppel in evidence. It was apparent to plaintiff upon the face of these statements that the agent, John C. Hall, had made a mistake against himself, and plaintiff, instead of correcting the mistake, as it should have done, quietly accepted this error and craftily undertook to take advantage oft it. There is not an element in the transaction which falls within the rule laid down by Lord Denman in Pickard *vs.* Sears (6 Ad. & El., 474.)

Admissions made under a misapprehension against one's legal rights, without the purpose of influencing the action of another, and not shown to have had that effect, do not estop the person making the admission from afterwards asserting the truth.

Spurlock *vs.* Sproule, 72 Mo., 508.
Acton *vs.* Dooley, 74 Mo., 63–69.
Monks *vs.* Belden, 80 Mo., 639–642.
Wiggins *vs.* Burkham, 10 Wallace, 129–132.

These monthly statements were not intended as accounts stated (Rec., p. 49). They were analogous to the periodical settlements of an administrator, each item of which is subject to revision when the final accounting is made, when all mistakes are corrected.

*In re* James L. Davis, 62 Mo., 450.

The charge of the court was correct, and fairly and fully laid the case before the jury. The issues were narrow, and the evidence as to the mistake of defendant in not charging his commission on premiums on cancelled policies and as to the amount of his loss in premiums by reason of the breach of contract of plaintiff in cutting off his contract as it did, was all one way, and would have justified the court in directing a verdict for plaintiff for a sum certain, being the $1,596.31 of commissions charged upon Chittenden and Hall's business for the months of June, July, August, September, October, and November, 1879.

The figures stated by the court in its charge to the jury (Rec., p. 75), in which the court told the jury that they "were not bound to accept," &c., if wrong, were in favor of the plaintiff, the sum for which, under the evidence, defendant was bound to account was such a sum as was embraced in his charge of $8,389.08 of commissions on cancellations, which arose during the period of Chittenden and Hall's contract (Rec., p. 64), amounting to $1,596.31. Calculating interest on this from July 27th, 1882, to October 10th, 1885, would only make $1,921.00, whereas the verdict was for plaintiff, $2,007.35. But the charge of the court was not subject to criticism nor erroneous.

Nudd *et al. vs.* Burrows, assignee, 91 United States, pp. 426–439.

IV.

The point that the practice of the parties put a construction on the contract, and that defendant is bound by it, does not possess any merit. This principal applies where there is ambiguity or doubt, but with language clear or precise,

and with its meaning evident, there is no room for construction, and consequently no need for anything to give it aid.

United States *vs.* Graham, 110 United States, 221.
United States *vs.* Temple, 105 United States, 97.
Swift *vs.* United States, 105 United States, 691.
Ruggles *vs.* Illinois, 108 United States, 526.

It is therefore respectfully asked that the judgment of the court below be affirmed at the costs of plaintiff in error.

GIVEN CAMPBELL,
*Attorney for Defendant.*